

BANKRUPTCY CODE, RULES AND OFFICIAL FORMS

2001 LAW SCHOOL EDITION



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Bankruptcy Code, Rules and Official Forms

**2001 Law School
Edition**



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PREFACE

This publication contains the current Bankruptcy Code (11 U.S.C.) and related provisions of United States Code Title 18 and 28, as most recently amended through Pub.L. 107-15, approved June 5, 2001.

The current bankruptcy court fee schedule, including changes effective in 2001, appears following 28 U.S.C. § 1930.

Judge William H. Brown, Lawrence R. Ahern, III and Nancy Fraas Maclean prepared the "Bankruptcy Highlights" feature, in which they discuss changes made by the 2000 amendments to the Bankruptcy Code and related statutes, Supreme Court decisions involving bankruptcy issues, and proposed amendments to Bankruptcy Rules.

A preliminary draft of proposed amendments to the Federal Rules of Bankruptcy Procedure has been included following those Rules.

The Official Forms follow the proposed amendments to the Federal Rules of Bankruptcy Procedure.

The Department of Justice regulations relating to the United States Trustees—including United States Trustee Guidelines for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330—are included, as well.

For comprehensive coverage of all aspects of bankruptcy law, see *Epstein, Nickles and White, Hornbook on Bankruptcy*.

For researching bankruptcy cases, see West's Bankruptcy Reporter and West's Bankruptcy Digest. Cross-references to the West Key Number System are provided throughout Title 11 and the Federal Rules of Bankruptcy Procedure of this 2001 Edition. For bankruptcy research on WESTLAW, see the "WESTLAW Electronic Research Guide" that follows the "Bankruptcy Highlights" feature.

THE PUBLISHER

July, 2001

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BANKRUPTCY HIGHLIGHTS

by

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I. Legislation

A. Exceptions Made for Bankruptcy Debtor

First, 49 U.S.C.A. § 521(b) was amended to add a new paragraph (8). Section 521(b) prohibits an owner or operator of a commercial motor vehicle who fails to pay a civil penalty assessed under chapters 5, 51, 149, or 311 from operating in interstate commerce. The amendment excepts from these consequences, "any person who is unable to pay a civil penalty because such

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person is a debtor in a case under chapter 11 of title 11, United States Code.”

Second, 49 U.S.C.A. § 13905(c) was amended to add subsection (B). Section 13905(c) provides for the revocation or suspension of the registration of an owner or operator of a commercial motor vehicle who fails to pay a civil penalty assessed under chapters 5, 51, 149, or 311. The amendment excepts from these consequences, “any person who is unable to pay a civil penalty because such person is a debtor in a case under chapter 11 of title 11, United States Code.”

B. Does Chapter 12 Survive?

Chapter 12 was reenacted for the period beginning on October 1, 1999, and ending on July 1, 2000. The Bankruptcy Reform Bill of 2000, discussed in Part IF below, would have made chapter 12 a permanent chapter. That Bill was passed by both houses of the 106th Congress, but the President promised to exercise a veto. At the time of this publication, the House had voted to extend chapter 12, retroactively, for at least nine months, but unless Congress extended it after this publication, chapter 12 was repealed effective July 1, 2000. All cases commenced or pending, and all matters and proceedings in or relating to such cases, are to be conducted and determined as if chapter 12 had not been repealed, and the substantive rights of parties in connection with such cases, matters, and proceedings continue to be governed under the laws applicable to such cases, matters, and proceedings as if chapter 12 chapter were still in effect. Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2, Oct. 9, 1999, 113 Stat. 1031.

The Administrative Office of the United States Courts has advised that while bankruptcy court clerks are not authorized to accept chapter 12 filings after the July 1 repeal, those clerks may accept such petitions under other chapters of the Bankruptcy Code, in which event the cases might be converted to chapter 12 upon reinstatement of that chapter by Congress.

C. Enhanced Sentencing Guidelines

Effective November 1, 2000, absent contrary Congressional action, the United States Sentencing Guidelines have been amended to include “a misrepresentation or other fraudulent action during the course of a bankruptcy proceeding” in the two-level enhancement of the punishment. 18 U.S.C.A. § 2F1.1(b). The Commentary to the amended § 2F1.1 explains: “The commission of a fraud in the course of a bankruptcy proceeding subjects the defendant to an enhanced sentence because that fraudulent conduct undermines the bankruptcy process as well as harms others with an interest in the bankruptcy estate.” Thus, concealing assets during bankruptcy proceedings or falsely filling out bankruptcy forms would constitute a misrepresentation or other fraudulent action during the course of a bankruptcy proceeding sufficient to subject the debtor to the enhanced sentence of the guidelines.

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D. Rolling Stock Equipment

The Wendell H. Ford Aviation Investment and Reform Act was signed by the President on April 5, 2000, becoming Public Law 106-181. Section 744 of that Act amends section 1168 of the Bankruptcy Code concerning rolling stock equipment to clarify that the rights, including enforcement rights and remedies, of a secured party, lessor or conditional vendor of rolling stock equipment, as defined in subsection (2), are not limited or affected by any section of the Code other than section 362. The restrictions on application of the automatic stay are expanded by the addition of subsection (B)(iii), which provides that the cure of any post-assumption default must be in accordance with the original contractual terms, if the contract provides for such cure. The definition of the equipment covered by the statute is expanded in subsection (2). Subsection (c) is added to compel surrender of such equipment whenever a secured or other protected party is entitled to possession or whenever a covered executory contract is deemed rejected.

E. Aircraft Equipment and Vessels

The same Act described in section D above also amends section 1110 of the Bankruptcy Code, and the changes are substantially identical to those made for rolling stock equipment. The definition of aircraft equipment and vessels is expanded in subsection (a)(3) of section 1110.

F. Bankruptcy Reform Bill

At the time of this publication, the 106th Congress was preparing to adjourn after passage of the Conference Report on the Bankruptcy Reform Bill that had been pending before both the 105th and 106th Congresses. The Bill was renamed the Gekas Grassley Bankruptcy Reform Conference Report when passed by the House as an attachment to H.R. 2415. In Senate 3186, the Bill was called the Bankruptcy Reform Act of 2000, the name it would carry if passed by both the Senate and House. The White House promised a veto of the Bill, and with the adjournment of Congress, the President would have the opportunity to exercise a pocket veto, if both Houses agreed upon a Bill before adjournment. A veto means that the Bill must be reintroduced in the new 107th Congress, if the proponents proceed with the reform effort. The President had earlier, in September, rejected a proposal from the Republican majority in the Congress, which proposal contained some changes to the Bill's homestead cap language, the retention of controversial Fair Debt Collection Practices Act reforms, and a controversial new "rent-to-own" provision that previously had been rejected by Democrats. The Bill, as passed in the separate Senate and House legislation, dropped any reference to an abortion clinic violence amendment that has backed by Democrats and the White House. As passed in the Senate and House of this Congress, the Bill also dropped the rent-to-own provision and the proposed limits on debtor's attorney's fees. However, the Bill retained many controversial features.

In the 106th Congress, the House earlier had passed H.R. 833 and the Senate had passed S. 625, and an informal conference effort had been undertaken to resolve differences in the two bills. In the following brief reviews of the legislation, major proposed changes will be noted, with the

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caution that these changes may not appear in a new bill that might be introduced in the 107th Congress. Thorough analyses of the Bills passed in the 106th Congress may be found at the website of the American Bankruptcy Institute, www.abiworld.org. In addition, at that website the entire Bill may be obtained. The ABI site will contain information and analysis of any bills that may be introduced in the next Congress.

1. Consumer Bankruptcy Provisions

A principal emphasis of the bills before the 106th Congress was on “means testing,” a concept intended to change the current procedure for dismissal of chapter 7 cases for substantial abuse under 11 U.S.C.A. § 707(b). Dismissal of a chapter 7 case, or possible conversion to chapter 13, would result if abuse is found, and abuse would be presumed if the debtor had available monthly income with which to pay unsecured creditors, after required payments to secured creditors. The formula for calculating available income may be based upon Internal Revenue Service national and local standards. The chapter 7 case trustee would have new responsibilities for calculating the debtor’s ability to pay unsecured creditors, and the bill provided for possible compensation to the trustee in the event of dismissal or conversion.

Section 102(a)(2) of the Conference Report provided that the presumption of abuse would be established if the debtor’s current monthly income, multiplied by sixty months, was not less than 25% of the debtor’s total nonpriority unsecured claims or \$6,000, whichever is greater; or if the debtor’s monthly income was \$10,000 or more. The presumption may be rebutted only by a demonstration of special circumstances that would justify additional monthly expenses or an adjustment to the debtor’s monthly income.

Section 102(a)(2) of the Conference Report added a safe harbor to the presumption of abuse, providing that only the bankruptcy judge, United States trustee or bankruptcy administrator may seek dismissal of a chapter 7 case for abuse, if the debtor’s income equals or is less than the applicable state median income; and no party may seek a dismissal based upon the debtor’s ability to repay debts if that debtor’s income equals or is less than the applicable state median income.

In addition to the good faith in proposing a plan that is currently required, a showing of good faith in filing for chapter 13 relief would be required as a condition of confirmation.

Domestic support obligations would receive a first priority under a revised section 503, moving those claims above administrative expenses. This would present difficult issues for case trustees and other parties who have become accustomed to receiving the first priority for their work in administering bankruptcy cases. Concurrent with this change, such support obligations would receive new protection from avoidance, discharge, subordination and automatic stay provisions.

Chapter 13 practice would be substantially changed by restrictions or prohibitions on strip down of secured claims. At the current time, the principal restriction is on claims secured by a debtor’s principal residence. 11 U.S.C.A. § 1322(b)(2). Under the Conference Report, the debtor would be unable to strip down an automobile, to its present value, if the secured debt

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was incurred within five years of the bankruptcy filing, thus restricting the use of bifurcation under Code section 506(a). For collateral other than automobiles, no strip down or bifurcation would be permitted if the debt was incurred within one year preceding the bankruptcy filing. At the same time, valuation of collateral in both chapters 7 and 13 would be fixed at replacement value, rather than wholesale or some other valuation basis. Chapter 13 debtors would be required to pay adequate protection payments to secured creditors, pending confirmation, while at the same time making pre-confirmation plan payments. The exceptions to discharge would be expanded in chapter 13. Whether these changes, and others, would result in more or fewer chapter 13 cases remains a point of disagreement among legislators and commentators.

Debtors generally would be required to give the trustee copies of tax returns or transcripts for the tax period prior to the bankruptcy filing, and failure to comply would be a basis for dismissal of the case. Creditors could request copies of the return or transcript, thus raising new privacy issues.

Compulsory credit counseling and debtor education were included in the Conference Report.

Whether exemptions, especially homesteads, may be limited in bankruptcy, notwithstanding a state's more liberal or unlimited exemption, had been a point of dispute in Congress. The Conference Report provided a cap of \$100,000 if the debtor's homestead was acquired during the two years before the bankruptcy filing, except that the cap would not apply to equity transferred from a prior homestead that was acquired more than two years before the bankruptcy, provided that the former and current homesteads were located in the same state.

New restrictions on reaffirmations, including increased disclosures and standardized forms, were adopted from the Senate Bill, with some exceptions made for reaffirmations with credit unions.

2. General Business Bankruptcy Provisions

Chapter 11 practice would see a change in the qualification and compensation of professionals and creditor committee members; aircraft and rolling stock financing protections would be modified [this portion was passed in separate legislation, see section I above]; automatic stay changes would be made to protect against abusive multiple filings by business debtors as well as individuals; court supervision of chapter 11 cases could increase with a requirement for mandatory status hearings; increased reporting requirements for all cases would impact chapter 11 debtors; a chapter 11 debtor's exclusivity period for confirmation would be more limited; significant changes would be made in the time limit for assumption of unexpired leases; and changes would be made in preference and other avoidance statutes. These changes, and others, while not receiving as much public attention as the consumer changes, would alter many aspects of current chapter 11 practice. Moreover, in the event a chapter 11 filing is by an individual, postpetition earnings would become property of the bankruptcy estate, and credit counseling may be required.

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3. Small Business Bankruptcy Provisions

The definition of a small business case would increase to include debtors whose liquidated debts do not exceed \$4 million, provided the United States trustee had appointed an unsecured creditors' committee. This increase from \$2 million could impact up to 85% of all chapter 11 cases. Standard forms for disclosure and plans in small business cases are encouraged, if not required, along with uniform reporting requirements for financial matters.

The court would be authorized to approve a disclosure statement conditionally without a separate hearing or to waive the disclosure requirement if the plan contained adequate information. The exclusivity period for confirming plans in small business cases would be reduced.

4. Municipal Bankruptcy Provisions

Section 901(a) would be amended to make applicable in chapter 9 cases the provisions of sections 555, 556, 559, and 560, that is, the provisions concerning the contractual right to liquidate securities, commodities and repurchase agreements and the contractual right to terminate swap agreements. In addition, two Code sections to be added by the Bankruptcy Reform Act of 1999 would be made applicable in chapter 9 cases: (1) section 561, concerning the contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts; and (2) section 562, concerning the measure of damages in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.

Sections 301 and 921 would be amended to clarify that a case under chapter 9 is commenced by the filing of a petition under section 301(a), but notwithstanding section 301(b), the court shall order relief only if the chapter 9 case is not dismissed after an objection. By contrast, the commencement of a voluntary case under chapter 7, 11, 12 or 13 constitutes an order for relief under such chapter. 11 U.S.C.A. § 301(b).

5. Bankruptcy Data

Chapter 6 of part I of title 28 would be amended by adding several sections pertaining to the collection of bankruptcy data regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13. The statistics to be compiled include the total assets and total liabilities of the debtors, the current monthly income, average income and average expenses of those debtors, the aggregate amount of debt discharged, the average period of time between the filing of the petition and the closing of the case, the number of cases in which a reaffirmation was filed, the number of cases dismissed, the number of cases dismissed for failure to make payments under a plan, the number of cases refiled after dismissal, the number of cases in which the plan was completed, the number of cases in which the debtor filed another case within the 6 years previous to the filing, the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct, and other information.

To facilitate the collection of bankruptcy data, the Attorney General would be required to issue rules requiring uniform forms for final reports by

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trustees in cases under chapters 7, 12, and 13, and periodic reports by debtors in possession or trustees, as the case may be, in cases under chapter 11. Also the final reports proposed for adoption by trustees under chapters 7, 11, 12, and 13 would include information about the length of time the case was pending, assets abandoned, assets exempted, receipts and disbursements of the estate, expenses of administration, claims asserted, claims allowed, distributions to claimants, and claims discharged without payment.

6. Bankruptcy Tax Provisions

Several changes would be seen in the bankruptcy law as concerns tax obligations, including: The trustee would be more restricted concerning tax liens and their subordination; tax determinations under Code section 505 would be restricted; an interest rate on tax claims would be specified; dischargeability and priority periods would be tolled while bankruptcy cases are pending; stays of tax court proceedings would be limited; setoff of tax refunds would be authorized as an exception to the automatic stay; and the obligations to pay taxes during the pendency of a bankruptcy case would be enhanced.

7. Ancillary and Other Cross-Border Cases

The Bankruptcy Reform Act of 2000 would have added a new chapter to the Bankruptcy Code—chapter 15, Ancillary and Other Cross-Border Cases. The chapter incorporates the Model Law on Cross-Border Insolvency so as to facilitate cooperation between United States courts, United States trustees, trustees, examiners, debtors, and debtors in possession and the courts and other competent authorities of foreign countries. The chapter increases certainty in trade and investment and protects the interests of all creditors, and other interested entities, including the debtor.

Chapter 15 would apply where assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding, where assistance is sought in a foreign country in connection with a case under the Bankruptcy Code, where a foreign proceeding and a case under the Code with respect to the same debtor are taking place concurrently, or where creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case under the Bankruptcy Code.

A case under chapter 15 would be commenced by the filing of a petition for recognition of a foreign proceeding under section 1515, with a petition for recognition to be accompanied by either a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative, or a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative, or any other evidence of the existence of the foreign proceeding and of the appointment of the foreign representative.

8. Chapter 12

As mentioned in Part I.B., above, chapter 12 would have been made a permanent chapter for relief to family farmers in the Reform Bill of 2000, and the monetary limits for filing under that chapter would be subject to pe-

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riodic adjustment tied to the Consumer Price Index. Certain of the governments' claims would also be given a lower priority in chapter 12 than in other chapters.

9. Health Care Bankruptcies

The Conference Report modified but adopted the Senate Bill's amendments to address some health care bankruptcy concerns, including disposition of patient records, priority of expenses for closing health care businesses, creation of patient advocates, and provisions for patient transfers upon the filing of a chapter 7 bankruptcy by a health care facility.

10. Appeals from Bankruptcy Courts

Whether the bankruptcy appellate panels would continue, either jointly with the district courts or as the exclusive first level of appeal, had been the subject of some disagreement. The Conference Report retained those panels, but in the event an appeal was taken to the district court and if the district court did not decide the appeal within thirty days or for cause extend that period, the district court would be by-passed. In other words, upon the failure of the district court to act within the thirty-day period, the applicable circuit court would deem the bankruptcy court's order to be the order of the district court, permitting the circuit court to entertain the appeal. No such time restrictions are placed upon the bankruptcy appellate panels.

11. Judicial Review of United States Trustee's Decisions

The Conference Report included a provision that a chapter 7 or 13 trustee could obtain judicial review of final decisions by the United States trustee concerning case trustee appointments, case assignments and expense reimbursements.

12. Venue

The current venue provisions were not changed. The House Bill had included a restriction on venue of cases involving corporate debtors, limiting the venue to the debtor's principal place of business.

II. Supreme Court Cases

Since the publication of the last Highlights, the United States Supreme Court has rendered several opinions with a bearing on bankruptcy.

A. Nelson v. Adams USA, Inc., 120 S.Ct. 1579 (2000).

In *Nelson v. Adams USA, Inc.*, 120 S.Ct. 1579, 146 L.Ed.2d 530 (2000), the Supreme Court held that an amendment of judgment imposing liability on a party simultaneously with an amendment of the defendant's pleadings to add that party violated F.R.Civ.P. 15 and due process. Under F.R.Civ.P. 15(a), a party added by amendment is given "10 days after service of the amended pleading" to respond.

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B. Raleigh v. Illinois Department of Revenue, 120 S.Ct. 1951 (2000).

In *Raleigh v. Illinois Department of Revenue*, 120 S.Ct. 1951 (2000), the Supreme Court affirmed the principle that where substantive state law governs an obligation and prescribes the burden of proof with respect to liability for that obligation, the burden of proof is not altered by the debtor's filing of a bankruptcy petition. In this case, the issue was who bears the burden of proof in the trustee's objection to a state tax claim. Since applicable state law put that burden upon the debtor/taxpayer, the trustee inherited the burden.

C. Hartford Underwriters Ins. Co. v. Union Planters Bank, 120 S.Ct. 1942 (2000).

In *Hartford Underwriters Ins. Co. v. Union Planters Bank*, 120 S.Ct. 1942 (2000), the workers' compensation insurer with whom the debtor had contracted during the chapter 11 reorganization process attempted to collect premiums that had accrued during the reorganization. Because there were no unsecured funds available, the insurer sought payment from property encumbered by a secured creditor's lien. The insurer's rationale was that, under section 503 of the Bankruptcy Code, the premiums were actual, necessary costs and expenses of preserving the estate, and, therefore, were administrative expenses, which, under section 506(c) of the Code, it could recover. The Court answered that administrative expenses are generally given priority over prepetition unsecured claims but not over secured claims with the exception that, under section 506(c), a trustee or a debtor in possession may recover from collateral the reasonable, necessary costs and expenses of preserving or disposing of the collateral. The Court concluded that, under section 506(c), not just any administrative claimant but only the trustee or a debtor in possession could seek recovery.

D. Kimel v. Florida Board of Regents, 120 S.Ct. 631 (2000).

In *Kimel v. Florida Board of Regents*, 120 S.Ct. 631 (2000), the Court added another case to its recent series of sovereign immunity decisions, which started with *Seminole Tribe v. Florida*, 116 S.Ct. 1114 (1996). In *Kimel*, the Court struck down amendments to the Age Discrimination in Employment Act that had subjected states to age discrimination suits brought by private parties in federal courts. The Court held that the Act's abrogation of the states' sovereign immunity violated the Eleventh Amendment, once again bringing into question the validity of Bankruptcy Code section 106's waiver of sovereign immunity.

III. Amendments to the Federal Rules of Civil Procedure Scheduled to Become Effective December 1, 2000

Amendments to Civil Rules 4, 5, 12, 14, 26, 30, and 37 are on track to become effective December 1, 2000, absent contrary congressional action.

Subdivisions (i)(2) and (3) of Rule 4 are amended to distinguish between the procedures for service on an officer or employee of the United States sued only in an official capacity and service on an officer or employee of the

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United States sued in an individual capacity for acts or omissions occurring in connection with the performance of duties on behalf of the United States.

Subdivision (d) of Rule 5 is amended to provide that disclosures made under Rule 26(a)(1) and (2), and discovery requests and responses under Rules 30, 31, 33, 34, and 36 may not be filed until they are used in proceedings in court. When discovery materials are used in court, only those portions that are actually used need be filed. Other parties are permitted to file other portions that they desire to use. The amendment invalidates local rules that forbid, permit, or require filing of these materials before they are used in the action.

Subdivision (a)(3) of Rule 12 is amended to extend to 60 days the time for both (1) service of an answer, counterclaim or cross-claim by an officer or employee of the United States sued only in an official capacity and (2) service of an answer, counterclaim or cross-claim by an officer or employee of the United States sued in an individual capacity for acts or omissions occurring in connection with the performance of duties on behalf of the United States.

Subdivisions (a) and (c) of Rule 14 are amended to reflect revisions in the Supplemental Rules for Certain Admiralty and Maritime Claims, Supplemental Rule C(6).

Subdivisions (a), (b), (d) and (f) of Rule 26 are amended to establish a nationally uniform practice and to eliminate the authority of local courts to opt out of the requirements of the rule.

Subdivision (a) of Rule 26 is amended to narrow the required disclosures to that information that the disclosing party intends to use to support its position. Committee Notes to the 2000 Amendments. The use may include support of a claim or a defense. It includes any stage of the litigation from discovery, to motion, to trial. Although the required disclosures are narrowed, the court retains the authority to order the discovery of matters relevant to the subject of the action. F.R.Civ.P. 26(b). If a party makes its disclosures and subsequently revises its plan to use undisclosed witnesses or material, it must supplement the disclosures. F.R.Civ.P. 26(e).

In addition, *Rule 26(a)* is amended to exempt from its application the following categories of proceedings which, by the way, constitute approximately one-third of all civil matters:

- (i) an action for review on an administrative record;
- (ii) a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence;
- (iii) an action brought without counsel by a person in custody of the United States, a state, or a state subdivision;
- (iv) an action to enforce or quash an administrative summons or subpoena;
- (v) an action by the United States to recover benefit payments;
- (vi) an action by the United States to collect on a student loan guaranteed by the United States;
- (vii) a proceeding ancillary to proceedings in other courts; and

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(viii) an action to enforce an arbitration award.

The time for the initial disclosures is extended from 10 days to 14 days after the parties have conferred pursuant to Rule 26(f). F.R.Civ.P. 26(a)(1).

Subdivision (b) of Rule 26 is amended to prescribe what limits on discovery the court may and may not set by local rule. "By order, the court may alter the limits in these rules on the number of depositions and interrogatories or the length of depositions under Rule 30. By order or local rule, the court may also limit the number of requests under Rule 36." F.R.Civ.P. 26(b)(2).

Subdivision (d) of Rule 26 is amended to exempt the categories of proceedings listed in subdivision (a)(1)(E) from the moratorium on discovery until after the discovery conference.

Subdivision (f) of Rule 26 is amended to exempt the categories of proceedings listed in subdivision (a)(1)(E) from the requirement of a discovery conference. It is also amended to require only a "conference" and not a "meeting." This conference must occur at least 21 days before the scheduling conference is held or a scheduling order is due under Civil Rule 16. Previously, only a 14 day gap was required. A written plan must be submitted to the court within 14 days after the meeting. Previously, only 10 days were allowed.

Subdivision (d)(1) of Rule 30 provides the manner in which an objection to a specific question in a deposition may be made on grounds of privilege. The rule expressly permits a person to instruct a deponent not to answer "when necessary to preserve a privilege, to enforce a limitation directed by the court, or to present a motion under Rule 30(d) (4)." The amendment clarifies that any person who instructs a deponent not to answer is limited to the circumstances listed in the rule, not just a party who instructs a witness.

Subdivision (d)(2) of Rule 30 was amended to limit the duration of a deposition to one day of seven hours. However, the parties may stipulate to or the court may order additional time if needed.

Subdivision (c) of Rule 37 has been amended to add as a ground for sanctions the failure to supplement discovery responses.

IV. Amendments to the Federal Rules of Bankruptcy Procedure Scheduled to Become Effective December 1, 2000

Amendments to Bankruptcy Rules 1017(e), 2002(a), 4003(b), 4004(c), and 5003(e) and (f) are on track to become effective December 1, 2000, absent contrary Congressional action.

Rule 1017(e) is amended to permit the court, for cause, to grant a timely request by the United States trustee for an extension of time to file a motion to dismiss a chapter 7 case under section 707(b), whether the court rules on the request before or after the expiration of the 60-day time limit for filing the extension request.

Rule 2002(a)(6) is amended to increase the dollar amount from \$500 to \$1000 and to clarify that notice is required only if the request for compensation or reimbursement is for more than \$1000.

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Rule 4003(b) is amended to permit the court, for cause, to grant a timely request for an extension of time to object to a list of claimed exemptions, whether the court rules on the request before or after the expiration of the 30-day time limit for filing an objection.

Rule 4004(c)(1) is amended to delay the granting of a chapter 7 discharge pending the determination of a motion for an extension of time to file a motion to dismiss the case under section 707(b).

Rule 5003 is amended to permit the United States and the state in which the court is located to file statements designating safe harbor mailing addresses for notice purposes and requiring the clerk to maintain a register of these addresses.

- V. Proposed Amendments to the Federal Rules of Civil Procedure Circulated to the Bench, Bar and Public as published in August 1999, for Comment Period that Closed February 15, 2000

Amendments to Civil Rules 5, 6, 65, 77, and 81 were published for comment by the bench, bar and public and scheduled for hearings concluded in January 2000. The public comment period has ended, and these proposed rules have not yet been approved by the Judicial Conference Committee on Rules of Practice and Procedure nor by the Supreme Court. As will be seen in section VII below, the Advisory Committees published additional amendments in August 2000 that appear to have replaced the following proposals.

Rule 5(b) would be amended to permit electronic service as long as the person served consents. Service is complete upon transmission. Electronic service through the court may be authorized by local rule.

The Advisory Committee recommended that no additional time be allowed for responding after electronic service, however, Alternative Rule 6(e) was published for comment. Alternative Rule 6(e) allows an additional 3 days to respond to a paper served by electronic means, as well as any other means of service other than personal delivery.

Subdivision (f) of Rule 65 would be added to apply the procedures of Rule 65 to copyright impoundment proceedings.

Rule 77(d) would be amended to permit local rules for electronic service of notice of orders or judgments to parties who consent to service by such means.

Rule 81 would be amended to apply the Federal Rules of Civil Procedure to copyright proceedings. The Copyright Rules would be abrogated.

- VI. Proposed Amendments to the Federal Rules of Bankruptcy Procedure Circulated to the Bench, Bar and Public as published in August 1999, for Comment Period that Closed February 15, 2000

Amendments to Bankruptcy Rules 1007, 2002, 3016, 3017, 3020, 9006, 9020, and 9022 were published in August 1999, for comment by the bench, bar and public and scheduled for hearings concluded in January 2000. These proposed changes have not yet been approved by the Judicial Conference Committee on Rules of Practice and Procedure nor by the Supreme

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Court. The Report of the Advisory Committee on Bankruptcy Rules summarized the proposals:

Rule 1007 would be amended so that, if the debtor knows that a creditor is an infant or incompetent person, the debtor will be required to include in the list of creditors and schedules the name, address, and legal relationship of any representative upon whom process would be served in an adversary proceeding against the infant or incompetent person. This information will enable the clerk to mail notices required under Rule 2002 to the appropriate representative.

Rule 2002(c) would be amended to assure that parties entitled to notice of a hearing on confirmation of a plan are given adequate notice of any injunction included in the plan that would enjoin conduct not otherwise enjoined by operation of the Bankruptcy Code.

Rule 2002(g) would be amended to clarify that where a creditor or indenture trustee files both a proof of claim which includes a mailing address and a separate request designating a different mailing address, the last paper filed determines the proper address, and that a request designating a mailing address is effective only with respect to a particular case. The amendments also clarify that a filed proof of claim is considered a request designating a mailing address if a notice of no dividend has been given under Rule 2002(e), but has been superseded by a subsequent notice of possible dividend under Rule 3002(c)(5). A new paragraph has been added to assure that notices to an infant or incompetent person are mailed to the person's legal representative identified in the debtor's schedules or list of creditors.

Rule 3016 would be amended to assure that entities whose conduct would be enjoined under a plan, rather than by operation of the Bankruptcy Code, are given adequate notice of the proposed injunction. The amendment would require that the plan and disclosure statement describe in specific and conspicuous language all acts to be enjoined and to identify the entities that would be subject to the injunction.

Rule 3017 would be amended to assure that entities whose conduct would be enjoined under a plan, but who would not ordinarily receive copies of the plan and disclosure statement or information regarding the confirmation hearing because they are neither creditors nor equity security holders, are provided with adequate notice of the proposed injunction, the confirmation hearing, and the deadline for objecting to confirmation of the plan.

Rule 3020 would be amended so that, if a plan contains an injunction against conduct not otherwise enjoined under the Code, the order confirming the plan must describe in detail all acts enjoined and identify the entities subject to the injunction. The amendment also requires that notice of entry of the order of confirmation be mailed to all known entities subject to the injunction.

Rule 9006(f), which is similar to F.R.Civ.P. 6(e), would be amended to expand the 3-day rule so that it will apply to any method of service, including service by electronic means, authorized under proposed amendments to F.R.Civ.P. 5(b), other than service by personal delivery.

Rule 9020 would be amended to delete provisions that delay for 10 days the effectiveness of an order of civil contempt issued by a bankruptcy judge and that render the order subject to de novo review by the district court.

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Other procedural provisions in the rule are replaced with a statement that a motion for an order of contempt made by the United States trustee or a party in interest is governed by Rule 9014 (contested matters).

Rule 9022(a) would be amended to authorize the clerk to serve notice of entry of a judgment or order of a bankruptcy judge by any method of service, including service by electronic means, permitted under the proposed amendments to F.R.Civ.P. 5(b).

VII. Proposed Amendments to the Federal Rules of Civil Procedure, with Public Comment Due by February 15, 2001

In Section V above, the proposed amendments to the Rules of Civil Procedure that were published in August 1999 were summarized. In August 2000, the Advisory Committees on Rules published the newest recommendations for rule changes, with a public comment period open until February 15, 2001. Public hearings also are scheduled in the first two months of 2001. These proposed rule changes are modifications of the proposed amendments to Civil Procedure Rules published in August 1999, and they reflect the Committees' response to public comments.

Proposed new rule 7.1 addresses disclosure statements and would require a nongovernmental corporate party to disclose any parent corporation and any publicly held corporation that owns 10% of its stock, or state that no such corporation exists. A party would also be required to disclose any information that may be required in the future by the Judicial Conference. The clerk is required to give a copy of the disclosure to each bankruptcy judge in the district. Rule 54 on judgments and costs would be amended to reflect changes in Rule 58, which addresses entry of judgments. The latter rule would be amended to address problems that arise when, because a court has failed to enter a separate judgment document, the appeal time never begins to run. In conjunction with proposed amendments to Appellate Rule 4(a)(7), the amended rules would provide that when a separate document is required, judgment is entered upon the occurrence of the earliest of either of two events: when the judgment is entered on the civil docket and set forth on a separate document, or when 60 days have run from entry of the judgment on the civil docket. Orders disposing of certain post-judgment motions would no longer have to be entered on a separate document.

VIII. Proposed Amendments to the Federal Rules of Bankruptcy Procedure and Official Form 1, with Public Comment Due by February 15, 2001.

The Judicial Conference Committees on the Appellate, Bankruptcy, Civil, and Criminal Rules have proposed the following amendments to the Bankruptcy Rules and Official Form 1, and the public comment period expires on February 15, 2001. Public hearings are scheduled in January and February 2001.

Rule 1004 would be amended to clarify that the involuntary petition rule implements section 303(b)(3)(A) of the Bankruptcy Code and is not intended to establish any substantive standard for the commencement of a voluntary case by a partnership.

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Rule 1004.1 would be added to set out the manner in which a case is commenced on behalf of an infant or an incompetent person. Proposed Rule 1004.1 is derived from F.R.Civ.P. 17(c).

Rule 2004 would be amended to clarify that an examination ordered under that rule may be held outside of the district in which the case is pending. The court where the examination will be held issues the subpoena, and it is served in the manner provided in F.R.Civ.P. 45, made applicable by Rule 9016. Moreover, the rule makes clear that an attorney authorized to practice either in the court in which the case is pending or in the court for the district in which the examination will be held may issue and sign the subpoena on behalf of the court for the district in which the examination will be held.

Rule 2014 would be rewritten to make it conform more closely to the applicable provisions of the Bankruptcy Code concerning employment of professionals. The rule also includes stylistic changes and sets out service requirements for the professional employment application.

Rule 2015(a)(5) would be amended to conform to 28 U.S.C.A. § 1920(a)(6) which was amended in 1996.

Rule 4004(c) would be amended to provide that the filing of any motion under section 707 of the Bankruptcy Code to dismiss a case postpones the entry of the discharge. Currently, only motions brought under section 707(b) postpone entry of the discharge.

Rule 9014 would be amended to include Rule 7009 on pleading special matters, and Rule 7017 on real parties in interest, infants and incompetent persons, to the list of Rules applicable to contested matters. It would also be amended to permit service of papers, other than the initial motion, under F.R.Civ.P. 5(b). Subdivision (d) would be added to clarify that in any matter presenting a disputed material issue of fact, an evidentiary hearing must be held at which the testimony of witnesses is taken under F.R.Civ.P. 43(a). Subdivision (e) would be amended to address problems of local variation in procedures for the appearance of witnesses by requiring that the court provide a mechanism to enable attorneys to know whether the presence of a witness is necessary at any particular hearing.

Rule 9027(a)(3) would be amended to clarify that the time limits for filing a notice of removal of a claim or cause of action apply to any claim or cause of action initiated after the commencement of the bankruptcy case, whether the bankruptcy case is still pending or has been suspended, dismissed, or closed.

Official Form 1, the voluntary petition, would be amended to require the debtor to disclose ownership or possession of property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety.

IX. Changes to Fee Schedule

In March 2000, the Judicial Conference of the United States approved the creation of a new fee of \$5 for a notice of appeal from a decision of a bankruptcy appellate panel to a court of appeals. This fee is in addition to the \$100 fee for docketing the appeal. This new fee will be collected by the clerk of the court of appeals, and the change makes the costs for appeals from the bankruptcy appellate panels consistent with that for appeals from

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the district or bankruptcy courts. The new fee is found as item 14 in the Court of Appeals Miscellaneous Fee Schedule, which is issued pursuant to 28 U.S.C.A. § 1913.

X. Revised Administrative Office Procedural Forms

In May 2000, the Administrative Office of the United States Courts published a Revised Bankruptcy Forms Manual, containing the Official Bankruptcy Forms and selected procedural forms for use in the bankruptcy courts. This Manual will be available on the federal judiciary's public Internet website within a few months; however, both the Official Forms and the Director of the Administrative Office's recommended procedural forms are found in this volume. Some of the procedural forms have been revised, and some of the older procedural forms have been deleted in the Revised Bankruptcy Forms Manual. As noted in section VIII above, a change in Official Form 1 is proposed but not yet adopted, and additional revisions in the Official Form for Statement of Financial Affairs are currently undergoing study by the relevant advisory committees of the Judicial Conference.

THE CODE OF THE LAWS OF THE UNITED STATES OF AMERICA

TITLE 11 BANKRUPTCY

Chap.	Sec.
1. General Provisions	101
3. Case Administration	301
5. Creditors, Debtor, and the Estate	501
7. Liquidation	701
9. Adjustment of Debts of a Municipality	901
11. Reorganization	1101
12. Adjustment of Debts of a Family Farmer With Regular Annual Income	1201
13. Adjustment of Debts of an Individual With Regular Income	1301

Enacting Clause. Section 101 of Pub.L. 95-598, Title I, Nov. 6, 1978, 92 Stat. 2549, provided in part: “The law relating to bankruptcy is codified and enacted as Title 11 of the United States Code, entitled ‘Bankruptcy’, and may be cited as 11 U.S.C. § _____.”

Repeals. Section 401(a) of Pub.L. 95-598, Title IV, Nov. 6, 1978, 92 Stat. 2682, provided that: “The Bankruptcy Act [act July 1, 1898, ch. 541, 30 Stat. 544, as amended] is repealed.”

Effective Dates. Section 402 of Pub.L. 95-598, Title IV, Nov. 6, 1978, 92 Stat. 2682, as amended by Pub.L. 98-249, § 1(a), Mar. 31, 1984, 98 Stat. 116; Pub.L. 98-271, § 1(a), Apr. 30, 1984, 98 Stat. 163; Pub.L. 98-299, § 1(a), May 25, 1984, 98 Stat. 214; Pub.L. 98-325, § 1(a), June 20, 1984, 98 Stat. 268; Pub.L. 98-353, Title I, §§ 113, 121(a), July 10, 1984, 98 Stat. 343, 345; and Pub.L. 98-454, Title X, § 1001, Oct. 5, 1984, 98 Stat. 1745, provided that:

“(a) Except as otherwise provided in this title, this Act shall take effect on October 1, 1979.

“(b) Except as provided in subsections (c) and (d) of this section, the amendments made by title II of this Act shall not be effective. [Pub.L. 98-353, Title I, § 121(a), July 10, 1984, 98 Stat. 345, also amended subsec. (b) by striking out ‘June 28, 1984’ and inserting in lieu thereof ‘the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984’. (Such Act was enacted on July 10, 1984.) This amendment was not executed to text.]

“(c) The amendments made by sections 210, 214, 219, 220, 222, 224, 225, 228, 229, 235, 244, 245, 246, 249, and 251 of this Act shall take effect on October 1, 1979.

“(d) The amendments made by sections 217, 218, 230, 247, 302, 314(j), 317, 327, 328, 338, and 411 of this Act shall take effect on the date of enactment of this Act.

“(e) [Repealed. Pub.L. 98-454, Title X, § 1001, Oct. 5, 1984, 98 Stat. 1745.]”

[Amendment by section 113 of Pub.L. 98-353 effective on June 27, 1984 pursuant to section 122(c) of Pub.L. 98-353. Amendment by section 121(a) of Pub.L. 98-353 effective on July 10, 1984 pursuant to section 122(a) of Pub.L. 98-353.]

Effective Date of 1984 Amendments. For effective date of amendments by Title I of Pub.L. 98-353, July 10, 1984, 98 Stat. 346, see section 122 of Pub.L. 98-353 set out as an Effective Date of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.

Section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, provided that:

“(a) Except as otherwise provided in this section the amendments made by this title [Title III of Pub.L. 98-353] shall become effective to cases filed 90 days after the date of enactment of this Act [July 10, 1984].

“(b) The amendments made by section 426(b) [amending section 303(b)(1) and (h)(1) of this title] shall become effective upon the date of enactment of this Act.

“(c) The amendments made by subtitle J [adding section 1113 of this title] shall become effective as provided in section 541(c) [set out as an Effective Date note under section 1113 of Title 11].”

Effective Date of 1994 Amendments. Section 702 of Pub.L. 103-394, October 22, 1994, 108 Stat. 4147, provided:

“(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].

“(b) Application of Amendments.—(1) Except as provided in paragraph (2), the amendments made by this Act shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act [October 22, 1994].

“(2)(A) Paragraph (1) shall not apply with respect to the amendment made by section 111.

“(B) The amendments made by sections 113 and 117 shall apply with respect to cases commenced under title 11 of the United States Code before, on, and after the date of the enactment of this Act [October 22, 1994].

“(C) Section 1110 of title 11, United States Code, as amended by section 201 of this Act, shall apply with respect to any lease, as defined in such section 1110(c) as so amended, entered into in connection with a settlement of any proceeding in any case pending under title 11 of the United States Code on the date of the enactment of this Act [October 22, 1994].

“(D) The amendments made by section 305 shall apply only to agreements entered into after the date of enactment of this Act [October 22, 1994].”

Short Title of 1984 Amendments. Section 1 of Pub.L. 98-353, July 10, 1984, 98 Stat. 333, provided: “That this Act [enacting sections 557, 558, 559, and 1113 of Title 11, Bankruptcy; sections 151 to 158, 1408 to 1412, and 1452 of Title

28, Judiciary and Judicial Procedure; amending sections 44, 98, 131, 133, 371, 372, 634, 957, 1334, 1360, and 1930 of Title 28; sections 8331, 8334, 8336, 8339, 8341, 8344, 8701, 8706, 8714a, and 8714b of Title 5; Government Organization and Employees, and sections 101, 102, 103, 105, 108, 109, 303, 321, 322, 326, 327, 328, 329, 330, 342, 343, 346, 349, 350, 361, 362, 363, 365, 366, 501, 502, 503, 505, 506, 507, 509, 510, 521, 522, 523, 524, 525, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 552, 553, 554, 555, 702, 703, 704, 707, 723, 724, 725, 726, 727, 728, 741, 745, 752, 761, 763, 765, 766, 901, 902, 903, 921, 922, 927, 943, 945, 1102, 1103, 1105, 1106, 1107, 1108, 1112, 1121, 1123, 1124, 1125, 1126, 1127, 1129, 1141, 1142, 1144, 1145, 1146, 1166, 1168, 1169, 1170, 1171, 1173, 1301, 1302, 1304, 1307, 1322, 1324, 1325, 1326, 1328, 1329, 15103, and 151302 of Title 11; Bankruptcy Rules 2002 and 3001, Title 11; and Bankruptcy Form No. 1, Title 11; enacting provisions set out as notes under sections 44, 133, 151, 152, 153, 371, 634, 1334, and 2075 of Title 28; sections 8331 and 8706 of Title 5; and preceding sections 101 and sections 101, 365, and 1113 of Title 11; amending provisions set out as section 581 of Title 28 and preceding section 101 of Title 11; and repealing provisions set out as notes preceding sections 151 and 1471 of Title 28] may be cited as the ‘Bankruptcy Amendments and Federal Judgeship Act of 1984’.”

Section 361 of Pub.L. 98–353, Title III, July 10, 1984, 98 Stat. 361, provided that: “This subtitle [amending sections 362, 365, and 541 of this title] may be cited as the ‘Leasehold Management Bankruptcy Amendments Act of 1983’.”

Section 381 of Pub.L. 98–353, Title III, July 10, 1984, 98 Stat. 364, provided that: “This subtitle [amending section 403(e) of Pub.L. 95–598, Nov. 6, 1978, 92 Stat. 2683, set out as a note preceding chapter 1] may be cited as the ‘Referees Salary and Expense Fund Act of 1984’.”

Short Title of 1986 Amendment. Section 1 of Pub.L. 99–554, § 1, Oct. 27, 1986, 100 Stat. provided: “That this Act [enacting sections 307, and 1201 to 1231 of Title 11, Bankruptcy, and section 589a of Title 28, Judiciary and Judicial Procedure, amending sections 101 to 103, 105, 108, 109, 303, 321, 322, 324, 326, 327, 329, 330, 341, 343, 345 to 348, 362 to 365, 502, 503, 521 to 524, 546 to 549, 554, 557, 701, 703 to 707, 724, 726 to 728, 743, 1102, 1104 to 1106, 1112, 1121, 1129, 1163, 1202, 1302, 1306, 1307, and 1324 to 1326 of Title 11, Bankruptcy Form No. 1, set out in the Appendix to Title 11, and sections 49, 96, 152, 156, 157, 526, 581, 582, 584 to 587, 604, 1334, and 1930 of Title 28, repealing sections 1201 to 1231 and 1501 to 151326 of Title 11, enacting provisions set out as notes under sections 581 and 589 of Title 28, amending provisions set out as a note under section 152 of Title 28, and repealing provisions set out as a note under preceding section 581 of Title 28] may be cited as the ‘Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986’.”

Short Title of 1988 Amendment. Pub.L. 100–334, § 1, June 16, 1988, 102 Stat. 610, provided that: “This Act [enacting section 1114 of this title, amending section 1129 of this title, enacting provisions set out as a note under this section and amending and repealing provisions set as notes under section 1106 of this title] may be cited as the ‘Retiree Benefits Bankruptcy Protection Act of 1988’.”

Short Title of 1990 Amendment. Pub.L. 101–581, § 1, Nov. 15, 1990, 104 Stat. 2865, provided that: “This Act [amending sections 523 and 1328 of this title and enacting provision set out as a note under section 523 of this title] may be cited as the ‘Criminal Victims Protection Act of 1990’.”

Pub.L. 101-647, Title III, § 3101, Nov. 29, 1990, 104 Stat. 4916, provided that: “This title [amending sections 523 and 1328 of this title and enacting provisions set out as a note under section 523 of this title] may be cited as the ‘Criminal Victims Protection Act of 1990’.”

Short Titles of 1992 Amendments. Pub.L. 102-361; § 1, Aug. 26, 1992, 106 Stat. 965, provided that: “This Act [amending 28 U.S.C.A. § 152] may be cited as the ‘Bankruptcy Judgeship Act of 1992’.”

Pub.L. 102-365, § 1, Sept. 3, 1992, 106 Stat. 972, provided that: “This Act [amending section 365 of this title] may be cited as the ‘Rail Safety Enforcement and Review Act’.”

Pub.L. 102-486, § 1(a), Oct. 23, 1992, 106 Stat. 2776, provided that: “This Act [enacting section 101(21A) and amending section 541(b) of this title] may be cited as the ‘Energy Policy Act of 1992’.”

Savings Provisions. Section 403 of Pub.L. 95-598, Title IV, Nov. 6, 1978, 92 Stat. 2683, as amended by Pub.L. 98-353, Title III, § 382, July 10, 1984, 98 Stat. 364, provided that:

“(a) A case commenced under the Bankruptcy Act, and all matters and proceedings in or relating to any such case, shall be conducted and determined under such Act as if this Act had not been enacted, and the substantive rights of parties in connection with any such bankruptcy case, matter, or proceeding shall continue to be governed by the law applicable to such case, matter, or proceeding as if the Act had not been enacted.

“(b) Notwithstanding subsection (a) of this section, sections 1165, 1167, 1168, 1169, and 1171 of title 11 of the United States Code, as enacted by section 101 of this Act, apply to cases pending under section 77 of the Bankruptcy Act (11 U.S.C. 205) on the date of enactment of this Act in which the trustee has not filed a plan of reorganization.

“(c) The repeal made by section 401(a) of this Act does not affect any right of a referee in bankruptcy. United States bankruptcy judge, or survivor of a referee in bankruptcy or United States bankruptcy judge to receive any annuity or other payment under the civil service retirement laws.

“(d) The amendments made by section 314 of this Act do not affect the application of chapter 9, chapter 96, section 2516, section 3057, or section 3284 of title 18 of the United States Code to any act of any person—

“(1) committed before October 1, 1979; or

“(2) committed after October 1, 1979, in connection with a case commenced before such date.

“(e) Notwithstanding subsection (a) of this section—

“(1) a fee may not be charged under section 40c(2)(a) of the Bankruptcy Act in a case pending under such Act after September 30, 1979, to the extent that such fee exceeds \$200,000;

“(2) a fee may not be charged under section 40c(2)(b) of the Bankruptcy Act in a case in which the plan is confirmed after September 30, 1978, or in which the final determination as to the amount of such fee is made after September 30, 1979, notwithstanding an earlier confirmation date, to the extent that such fee exceeds \$100,000;

“(3) after September 30, 1979, all moneys collected for payment into the referees’ salary and expense fund in cases filed under the Bankruptcy Act shall be collected and paid into the general fund of the Treasury; and

“(4) any balance in the referees’ salary and expense fund in the Treasury on October 1, 1979, shall be transferred to the general fund of the Treasury and the referees’ salary and expense fund account shall be closed.”

Separability of Provisions. Section 119 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 344, provided that: “If any provision of this Act [see Short Title of 1984 Amendment note set out above] or the application thereof to any person or circumstance is held invalid, the remainder of this Act, or the application of that provision to persons or circumstances other than those as to which it is held invalid, is not affected thereby.”

Section 551 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 391, provided that: “If any provision of this title [Title III of Pub.L. 98-353] or any amendment made by this title, or the application thereof to any person or circumstance is held invalid, the provisions of every other part, and their application shall not be affected thereby.”

Section 701 of Pub.L. 103-394, Title VII, October 22, 1994, 108 Stat. 4106, provided that: “If any provision of this Act or amendment made by this Act or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remaining provisions of and amendments made by this Act and the application of such other provisions and amendments to any person or circumstance shall not be affected thereby.”

Legislative History. For legislative history and purpose of Pub.L. 95-598, see 1978 U.S.Code Cong. and Adm.News, p. 5787.

CHAPTER 1—GENERAL PROVISIONS

Sec.

- 101. Definitions.
 - 102. Rules of construction.
 - 103. Applicability of chapters.
 - 104. Adjustment of dollar amounts.
 - 105. Power of court.
 - 106. Waiver of sovereign immunity.
 - 107. Public access to papers.
 - 108. Extension of time.
 - 109. Who may be a debtor.
 - 110. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.
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§ 101. Definitions

In this title—

(1) “accountant” means accountant authorized under applicable law to practice public accounting, and includes professional accounting association, corporation, or partnership, if so authorized;

(2) “affiliate” means—

(A) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(B) corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(C) person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or

(D) entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement;

[(3) Redesignated (21B)]

(4) “attorney” means attorney, professional law association, corporation, or partnership, authorized under applicable law to practice law;

(5) “claim” means—

(A) ~~right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or~~

(B) ~~right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;~~

(6) “commodity broker” means futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, as defined in section 761 of this title, with respect to which there is a customer, as defined in section 761 of this title;

(7) “community claim” means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case;

(8) “consumer debt” means debt incurred by an individual primarily for a personal, family, or household purpose;

(9) “corporation”—

(A) includes—

(i) association having a power or privilege that a private corporation, but not an individual or a partnership, possesses;

(ii) partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association;

(iii) joint-stock company;

(iv) unincorporated company or association; or

(v) business trust; but

(B) does not include limited partnership;

(10) “creditor” means—

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

(B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or

(C) entity that has a community claim;

(11) “custodian” means—

(A) receiver or trustee of any of the property of the debtor, appointed in a case or proceeding not under this title;

(B) assignee under a general assignment for the benefit of the debtor's creditors; or

(C) trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor's creditors;

(12) "debt" means liability on a claim;

(12A) "debt for child support" means a debt of a kind specified in section 523(a)(5) of this title for maintenance or support of a child of the debtor;

(13) "debtor" means person or municipality concerning which a case under this title has been commenced;

(14) "disinterested person" means person that—

(A) is not a creditor, an equity security holder, or an insider;

(B) is not and was not an investment banker for any outstanding security of the debtor;

(C) has not been, within three years before the date of the filing of the petition, an investment banker for a security of the debtor, or an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the debtor;

(D) is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor or of an investment banker specified in subparagraph (B) or (C) of this paragraph; and

(E) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor or an investment banker specified in subparagraph (B) or (C) of this paragraph, or for any other reason;

(15) "entity" includes person, estate, trust, governmental unit, and United States trustee;

(16) "equity security" means—

(A) share in a corporation, whether or not transferable or denominated "stock", or similar security;

(B) interest of a limited partner in a limited partnership; or

(C) warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph;

(17) "equity security holder" means holder of an equity security of the debtor;

(18) "family farmer" means—

(A) individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed \$1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a

debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and

(i) more than 80 percent of the value of its assets consists of assets related to the farming operation;

(ii) its aggregate debts do not exceed \$1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership; and

(iii) if such corporation issues stock, such stock is not publicly traded;

(19) "family farmer with regular annual income" means family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title;

(20) "farmer" means (except when such term appears in the term "family farmer") person that received more than 80 percent of such person's gross income during the taxable year of such person immediately preceding the taxable year of such person during which the case under this title concerning such person was commenced from a farming operation owned or operated by such person;

(21) "farming operation" includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state;

(21A) "farmout agreement" means a written agreement in which—

(A) the owner of a right to drill, produce, or operate liquid or gaseous hydrocarbons on property agrees or has agreed to transfer or assign all or a part of such right to another entity; and

(B) such other entity (either directly or through its agents or its assigns), as consideration, agrees to perform drilling, reworking, recompleting, testing, or similar or related operations, to develop or produce liquid or gaseous hydrocarbons on the property;

(21B) "Federal depository institutions regulatory agency" means—

(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act) for which no

conservator or receiver has been appointed, the appropriate Federal banking agency (as defined in section 3(q) of such Act);

(B) with respect to an insured credit union (including an insured credit union for which the National Credit Union Administration has been appointed conservator or liquidating agent), the National Credit Union Administration;

(C) with respect to any insured depository institution for which the Resolution Trust Corporation has been appointed conservator or receiver, the Resolution Trust Corporation; and

(D) with respect to any insured depository institution for which the Federal Deposit Insurance Corporation has been appointed conservator or receiver, the Federal Deposit Insurance Corporation;

(22) the term “financial institution”—

(A) means—

(i) a Federal reserve bank or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such entity and, when any such Federal reserve bank, receiver, conservator, or entity is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, the customer; or

(ii) in connection with a securities contract, as defined in section 741 of this title, an investment company registered under the Investment Company Act of 1940; and

(B) includes any person described in subparagraph (A) which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991;

(23) “foreign proceeding” means proceeding, whether judicial or administrative and whether or not under bankruptcy law, in a foreign country in which the debtor’s domicile, residence, principal place of business, or principal assets were located at the commencement of such proceeding, for the purpose of liquidating an estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization;

(24) “foreign representative” means duly selected trustee, administrator, or other representative of an estate in a foreign proceeding;

(25) “forward contract” means a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into, including, but not limited to, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any combination thereof or option thereon;

(26) “forward contract merchant” means a person whose business consists in whole or in part of entering into forward contracts as or with merchants in a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade;

(27) “governmental unit” means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government;

(28) “indenture” means mortgage, deed of trust, or indenture, under which there is outstanding a security, other than a voting-trust certificate, constituting a claim against the debtor, a claim secured by a lien on any of the debtor’s property, or an equity security of the debtor;

(29) “indenture trustee” means trustee under an indenture;

(30) “individual with regular income” means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker;

(31) “insider” includes—

(A) if the debtor is an individual—

- (i) relative of the debtor or of a general partner of the debtor;
- (ii) partnership in which the debtor is a general partner;
- (iii) general partner of the debtor; or

(iv) corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation—

- (i) director of the debtor;
- (ii) officer of the debtor;
- (iii) person in control of the debtor;
- (iv) partnership in which the debtor is a general partner;
- (v) general partner of the debtor; or

(vi) relative of a general partner, director, officer, or person in control of the debtor;

(C) if the debtor is a partnership—

- (i) general partner in the debtor;
- (ii) relative of a general partner in, general partner of, or person in control of the debtor;
- (iii) partnership in which the debtor is a general partner;
- (iv) general partner of the debtor; or
- (v) person in control of the debtor;

(D) if the debtor is a municipality, elected official of the debtor or relative of an elected official of the debtor;

(E) affiliate, or insider of an affiliate as if such affiliate were the debtor; and

(F) managing agent of the debtor;

(32) “insolvent” means—

(A) with reference to an entity other than a partnership and a municipality, financial condition such that the sum of such entity’s debts is greater than all of such entity’s property, at a fair valuation, exclusive of—

(i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity’s creditors; and

(ii) property that may be exempted from property of the estate under section 522 of this title;

(B) with reference to a partnership, financial condition such that the sum of such partnership’s debts is greater than the aggregate of, at a fair valuation—

(i) all of such partnership’s property, exclusive of property of the kind specified in subparagraph (A)(i) of this paragraph; and

(ii) the sum of the excess of the value of each general partner’s nonpartnership property, exclusive of property of the kind specified in subparagraph (A) of this paragraph, over such partner’s nonpartnership debts; and

(C) with reference to a municipality, financial condition such that the municipality is—

(i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or

(ii) unable to pay its debts as they become due;

(33) “institution-affiliated party”—

(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act), has the meaning given it in section 3(u) of the Federal Deposit Insurance Act; and

(B) with respect to an insured credit union, has the meaning given it in section 206(r) of the Federal Credit Union Act;

(34) “insured credit union” has the meaning given it in section 101(7) of the Federal Credit Union Act;

(35) “insured depository institution”—

(A) has the meaning given it in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes an insured credit union (except in the case of paragraphs (21B) and (33)(A) of this subsection);

(35A) “intellectual property” means—

(A) trade secret;

(B) invention, process, design, or plant protected under title 35;

(C) patent application;

(D) plant variety;

(E) work of authorship protected under title 17; or

(F) mask work protected under chapter 9 of title 17; to the extent protected by applicable nonbankruptcy law; and

(36) “judicial lien” means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding;

(37) “lien” means charge against or interest in property to secure payment of a debt or performance of an obligation:

(38) “margin payment” means, for purposes of the forward contract provisions of this title, payment or deposit of cash, a security or other property, that is commonly known in the forward contract trade as original margin, initial margin, maintenance margin, or variation margin, including mark-to-market payments, or variation payments; and

(39) “mask work” has the meaning given it in section 901(a)(2) of title 17.

(40) “municipality” means political subdivision or public agency or instrumentality of a State;

(41) “person” includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

(A) acquires an asset from a person—

(i) as a result of the operation of a loan guarantee agreement; or

(ii) as receiver or liquidating agent of a person:

(B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or

(C) is the legal or beneficial owner of an asset of—

(i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or

(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;

shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit;

(42) “petition” means petition filed under section 301, 302, 303, or 304 of this title, as the case may be, commencing a case under this title;

(42A) “production payment” means a term overriding royalty satisfiable in cash or in kind—

(A) contingent on the production of a liquid or gaseous hydrocarbon from particular real property; and

(B) from a specified volume, or a specified value, from the liquid or gaseous hydrocarbon produced from such property, and determined without regard to production costs;

(43) “purchaser” means transferee of a voluntary transfer, and includes immediate or mediate transferee of such a transferee;

(44) “railroad” means common carrier by railroad engaged in the transportation of individuals or property or owner of trackage facilities leased by such a common carrier;

(45) “relative” means individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree;

(46) “repo participant” means an entity that, on any day during the period beginning 90 days before the date of the filing of the petition, has an outstanding repurchase agreement with the debtor;

(47) “repurchase agreement” (which definition also applies to a reverse repurchase agreement) means an agreement, including related terms, which provides for the transfer of certificates of deposit, eligible bankers’ acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers’ acceptances, or securities with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptances, or securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds;

(48) “securities clearing agency” means person that is registered as a clearing agency under section 17A of the Securities Exchange Act of 1934 or whose business is confined to the performance of functions of a clearing agency with respect to exempted securities, as defined in section 3(a)(12) of such Act for the purposes of such section 17A;

(49) “security”—

(A) includes—

- (i) note;
- (ii) stock;
- (iii) treasury stock;
- (iv) bond;
- (v) debenture;
- (vi) collateral trust certificate;
- (vii) pre-organization certificate or subscription;
- (viii) transferable share;
- (ix) voting-trust certificate;
- (x) certificate of deposit;
- (xi) certificate of deposit for security;

(xii) investment contract or certificate of interest or participation in a profit-sharing agreement or in an oil, gas, or mineral royalty or lease, if such contract or interest is required to be the subject of a registration statement filed with the Securities and

Exchange Commission under the provisions of the Securities Act of 1933, or is exempt under section 3(b) of such Act from the requirement to file such a statement;

(xiii) interest of a limited partner in a limited partnership;

(xiv) other claim or interest commonly known as “security”; and

(xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase or sell, a security; but

(B) does not include—

(i) currency, check, draft, bill of exchange, or bank letter of credit;

(ii) leverage transaction, as defined in section 761 of this title;

(iii) commodity futures contract or forward contract;

(iv) option, warrant, or right to subscribe to or purchase or sell a commodity futures contract;

(v) option to purchase or sell a commodity;

(vi) contract or certificate of a kind specified in subparagraph (A)(xii) of this paragraph that is not required to be the subject of a registration statement filed with the Securities and Exchange Commission and is not exempt under section 3(b) of the Securities Act of 1933 from the requirement to file such a statement; or

(vii) debt or evidence of indebtedness for goods sold and delivered or services rendered;

(50) “security agreement” means agreement that creates or provides for a security interest;

(51) “security interest” means lien created by an agreement;

(51A) “settlement payment” means, for purposes of the forward contract provisions of this title, a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, a net settlement payment, or any other similar payment commonly used in the forward contract trade;

(51B) “single asset real estate” means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto having aggregate noncontingent, liquidated secured debts in an amount no more than \$4,000,000;

(51C) “small business” means a person engaged in commercial or business activities (but does not include a person whose primary activity is the business of owning or operating real property and activities incidental thereto) whose aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition do not exceed \$2,000,000;

(52) “State” includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title;

(53) “statutory lien” means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute;

(53A) “stockbroker” means person—

(A) with respect to which there is a customer, as defined in section 741 of this title; and

(B) that is engaged in the business of effecting transactions in securities—

(i) for the account of others; or

(ii) with members of the general public, from or for such person’s own account;

(53B) “swap agreement” means—

(A) an agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing);

(B) any combination of the foregoing; or

(C) a master agreement for any of the foregoing together with all supplements;

(53C) “swap participant” means an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor;

(53D) “timeshare plan” means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A “timeshare interest” is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan;

(54) “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor’s equity of redemption;

(54A) the term “uninsured State member bank” means a State member bank (as defined in section 3 of the Federal Deposit Insurance Act) the deposits of which are not insured by the Federal Deposit Insurance Corporation; and

(55) “United States”, when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States;

(56A) “term overriding royalty” means an interest in liquid or gaseous hydrocarbons in place or to be produced from particular real property that entitles the owner thereof to a share of production, or the value thereof, for a term limited by time, quantity, or value realized;

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2549; Pub.L. 97-222, § 1, July 27, 1982, 96 Stat. 235; Pub.L. 98-353, Title III, §§ 391, 401, 421, July 10, 1984, 98 Stat. 364, 366, 367; Pub.L. 99-554, Title II, §§ 201, 251, 283(a), Oct. 27, 1986, 100 Stat. 3097, 3104, 3116; Pub.L. 100-506, § 1(a), Oct. 18, 1988, 102 Stat. 2538; Pub.L. 100-597, § 1, Nov. 3, 1988, 102 Stat. 3028; Pub.L. 101-311, Title I, § 101, Title II, § 201, June 25, 1990, 104 Stat. 267, 269; Pub.L. 101-647, Title XXV, § 2522(e), Nov. 29, 1990, 104 Stat. 4867; Pub.L. 102-486, Title XXX, § 3017, Oct. 24, 1992, 106 Stat. 2776; Pub.L. 103-394, Title I, § 106, Title II, §§ 208(a), 215, 217(a), 218(a), Title III, § 304(a), Title V, § 501, October 22, 1994, 108 Stat. 4111, 4124, 4126-4128, 4132, 4141-4143; Pub.L. 106-554, § 1(a)(5) [Title I, § 112(c)(3), (4)], Dec. 21, 2000, 14 Stat. 2763, 2763- .

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 101 of title 11 contains 40 definitions:

Paragraph (1) defines “accountant” as an accountant authorized under applicable law to practice accounting. The term includes a professional accounting association, corporation, or partnership if applicable law authorizes such a unit to practice accounting.

Paragraph (2) defines “affiliate.” An affiliate is an entity with a close relationship to the debtor. It includes a 20 percent parent or subsidiary of the debtor, whether a corporate, partnership, individual, or estate parent.

The use of “directly or indirectly” in subparagraphs (A) and (B) is intended to cover situations in which there is an opportunity to control, and where the existence of that opportunity operates as indirect control.

“Affiliate” is defined primarily for use in the definition of insider, infra, and for use in the chapter 11 reorganization cases. The definition of “affiliate” does not include an entity acting in a fiduciary or agency capacity if the entity does not have the sole discretionary power to vote 20 percent of the voting securities but hold them solely as security and have

not exercised the power to vote. This restriction applies to a corporate affiliate under subparagraph (B) of paragraph (2).

Subsections (C) and (D) of paragraph (2) define affiliate also as those persons and entities whose business or substantially all of whose property is operated under a lease or operating agreement by a debtor and whose business or property is more than 50 percent under the control of the debtor.

The definition of “attorney” in paragraph (3) is similar to the definition of accountant.

Paragraph (4) defines “claim.” The effect of the definition is a significant departure from present law. Under present law, “claim” is not defined in straight bankruptcy. Instead it is simply used, along with the concept of provability in section 63 of the Bankruptcy Act [former section 103 of this title], to limit the kinds of obligations that are payable in a bankruptcy case. The term is defined in the debtor rehabilitation chapters of present law far more broadly. The definition in paragraph (4) adopts an even broader definition of claim than is found in the present debtor rehabilitation chapters. The definition is any right to pay-

ment, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. The definition also includes as a claim an equitable right to performance that does not give rise to a right to payment. By this broadest possible definition and by the use of the term throughout the title 11, especially in subchapter I of chapter 5, the bill contemplates that all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case. It permits the broadest possible relief in the bankruptcy court.

Paragraph (5) defines "commodity broker" by reference to various terms used and defined in subchapter IV of chapter 7, Commodity Broker Liquidation. The terms are described in connection with section 761, *infra*.

Paragraph (6) defines "community claim" for those eight States that have community property laws. The definition is keyed to the liability of the debtor's property for a claim against either the debtor or the debtor's spouse. If the debtor's property is liable for a claim against either, that claim is a community claim.

Paragraph (7) defines "consumer debt". The definition is adapted from the definition used in various consumer protection laws. It encompasses only a debt incurred by an individual primarily for a personal, family, or household purpose.

The definition of "corporation" in paragraph (8) is similar to the definition in current law, section 1(8) [former section 1(8) of this title]. The term encompasses any association having the power or privilege that a private corporation, but not an individual or partnership, has; partnership associations organized under a law that makes only the capital subscribed responsible for the debts of the partnership; joint-stock company; unincorporated company or association; and business trust. "Unincorporated association" is intended specifically to include a labor union, as well as other bodies that come under that phrase as used under current law. The exclusion of limited partnerships is explicit, and not left to the case law.

Paragraph (9) [deleted by House amendment] defines "court" as the bankruptcy judge in the district in which the case is pending except in municipal adjustment and railroad reorganization cases, where "court" means the Federal district judge.

Paragraph (10) [now (9)] defines "creditor" to include holders of prepetition claims against the debtor. However, it also encompasses certain holders of claims that are deemed to arise before the date of the filing of the petition, such as those injured by the rejection of an executory contract or unexpired lease, certain investment tax credit recapture claim holders, "involuntary gap" creditors, and certain holders of the right of setoff. The term also includes the holder of a prepetition community claim. A guarantor of or surety for a claim against the debtor is also a creditor, because he holds a contingent claim against the debtor that becomes fixed when he pays the creditor whose claim he has guaranteed or insured.

Paragraph (11) [now (10)] defines "custodian." There is no similar definition in current law. It is defined to facilitate drafting, and means a prepetition liquidator of the debtor's property, such as an assignee for the benefit of creditors, a receiver of the debtor's property, or administrator of the debtor's property. The definition of custodian to include a receiver or trustee is descriptive, and not meant to be limited to court officers with those titles. The definition is intended to include other officers of the court if their functions are substantially similar to those of a receiver or trustee.

"Debt" is defined in paragraph (12) [now (11)] as a liability on a claim. The terms "debt" and "claim" are coextensive: a creditor has a "claim" against the debtor; the debtor owes a "debt" to the creditor. This definition of "debt" and the definition of "claim" on which it is based, proposed 11 U.S.C. 101(4), does not include a transaction such as a policy loan on an insurance policy. Under that kind of transaction, the debtor is not liable to the insurance company for repayment; the amount owed is merely available to the company for setoff against any benefits that become payable under the policy. As such, the loan is not a claim (it is not a right to payment) that the company can assert against the estate; nor is the debtor's obligation a debt (a liability on a claim) that will be discharged under proposed 11 U.S.C. 523 or 524.

Paragraph (13) [now (12)] defines "debtor." Debtor means person or municipality concerning which a case under title 11 has been commenced. This is a change in terminology from present law, which identifies the person by or against whom a petition is filed in a straight bankruptcy liquidation case as the "bankrupt", and a person or municipality that is proceeding

under a debtor rehabilitation chapter (chapters VIII through XIII of the Bankruptcy Act) [former sections 201 et seq., 301 et seq., 501 et seq., 701 et seq., 801 et seq. and 1001 et seq. of this title] as a “debtor.” The term “debtor” is used for both kinds of cases in this bill, for ease of reference in chapters 1, 3, and 5 (which apply to straight bankruptcy and reorganization cases).

Paragraph (14) [now (13)] defines “disinterested person.” The definition is adapted from section 158 of chapter X of current law [former section 558 of this title], though it is expanded and modified in some respects. A person is a disinterested person if the person is not a creditor, equity security holder, or insider; is not and was not an investment banker of the debtor for any outstanding security of the debtor (the change from underwriter in current law to investment banker is to make the term more descriptive and to avoid conflict with the definition of underwriter in section 2(11) of the Securities Act of 1933 (15 U.S.C. 77b(11)) [section 77b(11) of Title 15, Commerce and Trade]); has not been an investment banker for a security of the debtor within 3 years before the date of the filing of the petition (the change from five years to three years here conforms the definition with the statute of limitations in the Securities Act of 1933) [section 77m of Title 15], or an attorney for such an investment banker; is not an insider of the debtor or of such an investment banker; and does not have an interest materially adverse to the estate.

“Entity” is defined, for convenience, in paragraph (15) [now (14)], to include person, estate, trust, and governmental unit. It is the most inclusive of the various defined terms relating to bodies or units.

Paragraph (16) [now (15)] defines “equity security.” The term includes a share or stock in a corporation, a limited partner’s interest in a limited partnership, and a warrant or right to subscribe to an equity security. The term does not include a security, such as a convertible debenture, that is convertible into equity security, but has not been converted.

Paragraph (17) [now (16)] defines “equity security holder” for convenience as the holder of an equity securing of the debtor.

Paragraph (18) [now (19)] defines “farmer”. It encompasses only those persons for whom farming operations contribute 75 percent or more of their total income.

Paragraphs (19) and (20) [now (22) and (23)] define “foreign proceeding” and “foreign representative”. A foreign proceeding is a proceeding in another country in which the debtor has some substantial connection for the purpose of liquidating the estate of the debtor or the purpose of financial rehabilitation of the debtor. A foreign representative is the representative of the estate in a foreign proceeding, such as a trustee or administrator.

Paragraph (21) [now (26)] defines “governmental unit” in the broadest sense. The definition encompasses the United States, a State, Commonwealth, District, Territory, municipality, or foreign state, and a department, agency, or instrumentality of any of those entities. “Department, agency, or instrumentality” does not include an entity that owes its existence to State action, such as the granting of a charter or a license but that has no other connection with a State or local government or the Federal Government. The relationship must be an active one in which the department, agency, or instrumentality is actually carrying out some governmental function.

Paragraph (22) [now (27)] defines “indenture.” It is similar to the definition of indenture in the Trust Indenture Act of 1939 [section 77aaa et seq. of Title 15, Commerce and Trade]. An indenture is the instrument under which securities, either debt or equity, of the debtor are outstanding.

Paragraph (23) [now (28)] defines “indenture trustee” as the trustee under an indenture.

Paragraph (24) [now (29)] defines “individual with regular income.” The effect of this definition, and of its use in section 109(e), is to expand substantially the kinds of individuals that are eligible for relief under chapter 13, Adjustment of Debts of an Individual with Regular Income. Chapter XIII [former section 1001 et seq. of this title] is now available only for wage earners. The definition encompasses all individuals with incomes that are sufficiently stable and regular to enable them to make payments under a chapter 13 plan. Thus, individuals on welfare, social security, fixed pension incomes, or who live on investment incomes, will be able to work out repayment plans with their creditors rather than being forced into straight bankruptcy. Also, self-employed individuals will be eligible to use chapter 13 if they have regular incomes.

However, the definition excludes certain stockbrokers and commodity brokers, in order

to prohibit them from proceeding under chapter 13 and avoiding the customer protection provisions of chapter 7.

“Insider”, defined in paragraph (25) [now (30)], is a new term. An insider is one who has a sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arms length with the debtor. If the debtor is an individual, then a relative of the debtor, a partnership in which the debtor is a general partner, a general partner of the debtor, and a corporation controlled by the debtor are all insiders. If the debtor is a corporation, then a controlling person, a relative of a controlling person, a partnership in which the debtor is a general partner, and a general partner of the debtor are all insiders. If the debtor is a partnership, then a general partner of or in the debtor, a relative of a general partner in the debtor, and a person in control are all insiders. If the debtor is a municipality, then an elected official of the debtor is an insider. In addition, affiliates of the debtor and managing agents are insiders.

The definition of “insolvent” in paragraph (26) [now (31)] is adopted from section 1(19) of current law [former section 1(19) of this title]. An entity is insolvent if its debts are greater than its assets, at a fair valuation, exclusive of property exempted or fraudulently transferred. It is the traditional bankruptcy balance sheet test of insolvency. For a partnership, the definition is modified to account for the liability of a general partner for the partnership’s debts. The difference in this definition from that in current law is in the exclusion of exempt property for all purposes in the definition of insolvent.

Paragraph (27) [now (32)] defines “judicial lien.” It is one of three kinds of liens defined in this section. A judicial lien is a lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

Paragraph (28) [now (33)] defines “lien.” The definition is new and is very broad. A lien is defined as a charge against or interest in property to secure payment of a debt or performance of an obligation. It includes inchoate liens. In general, the concept of lien is divided into three kinds of liens: judicial liens, security interests, and statutory liens. Those three categories are mutually exclusive and are exhaustive except for certain common law liens.

Paragraph (29) [now (34)] defines “municipality.” The definition is adapted from the

terms used in the chapter IX (municipal bankruptcy) amendment to the Bankruptcy Act enacted in 1976 (Pub.L. 94-260) [amending former section 401 et seq. of this title]. That amendment spoke in terms of “political subdivision or public agency or instrumentality of a State”. Bankruptcy Act Sec. 84 [former section 404 of this title]. The term municipality is defined by those three terms for convenience. It does not include the District of Columbia or any territories of the United States.

“Person” is defined in paragraph (30) [now (35)]. The definition is a change in wording, but not in substance, from the definition in section 1(23) of the Bankruptcy Act [former section 1(23) of this title]. The definition is also similar to the one contained in 1 U.S.C. sec. 1 [section 1 of Title 1, General Provisions], but is repeated here for convenience and ease of reference. Person includes individual partnership, and corporation. The exclusion of governmental units is made explicit in order to avoid any confusion that may arise if, for example, a municipality is incorporated and thus is legally a corporation as well as governmental unit. The definition does not include an estate or a trust, which are included only in the definition of “entity” in proposed 11 U.S.C. 101(14).

“Petition” is defined for convenience in paragraph (31) [now (36)]. Petition is a petition under section 301, 302, 303, or 304 of the bankruptcy code—that is, a petition that commences a case under title 11.

Paragraph (32) [now (37)] defines purchaser as a transferee of a voluntary transfer, such as a sale or gift, and includes an immediate or mediate transferee of a purchaser.

The definition of “railroad” in paragraph (33) [now (38)] is derived from section 77 of the Bankruptcy Act [former section 205 of this title]. A railroad is a common carrier by railroad engaged in the transportation of individuals or property, or an owner of trackage facilities leased by such a common carrier. The effect of the definition and the use of the term in section 109(d) is to eliminate the limitation now found in section 77 of the Bankruptcy Act [former section 205 of this title] that only railroads engaged in interstate commerce may proceed under the railroad reorganization provisions. The limitation may have been inserted because of a doubt that the commerce power could not reach intrastate railroads. Be that

as it may, this bill is enacted under the bankruptcy power.

Paragraph (34) [now (39)] defines “relative” as an individual related by affinity or consanguinity within the third degree as determined by the common law, and includes individuals in a step or adoptive relationship. The definition is similar to current law, but adds the latter phrase. This definition should be applied as of the time when the transaction that it concerns took place. Thus, a former spouse is not a relative, but if, for example, for purposes of the preference section, proposed 11 U.S.C. 547(b)(4)(B), the transferee was a spouse of the debtor at the time of the transfer sought to be avoided, then the transferee would be relative and subject to the insider rules, even if the transferee was no longer married to the debtor at the time of the commencement of the case or at the time of the commencement of the preference recovery proceeding.

Paragraph (35) [now (43)] defines “security.” The definition is new and is modeled on the most recent draft of the American Law Institute’s proposed securities code, with some exceptions. The interest of a limited partner in a limited partnership is included in order to make sure that everything that is defined as an equity security is also a “security.” The definition, as with the definition of “entity”, “insider”, and “person”, is open-ended because the term is not susceptible to precise specification. Thus the courts will be able to use the characterization provided in this definition to treat with new kinds of documents on a flexible basis.

Paragraphs (36) and (37) [now (44) and (45)] defined “security agreement” and “security interest.” A security interest is one of the kinds of liens. It is a lien created by an agreement. Security agreement is defined as the agreement creating the security interest. Though these terms are similar to the same terms in the Uniform Commercial Code, article IX, they are broader. For example, the U.C.C. does not cover real property mortgages. Under this definition, such a mortgage is included, as are all other liens created by agreement, even though not covered by the U.C.C. All U.C.C. security interests and security agreements are, however, security interests and security agreements under this definition. Whether a consignment or a lease constitutes a security interest under the bankruptcy code [this title] will depend on whether it constitutes a security interest under applicable State or local law.

Paragraph (38) [now (47)] defines another kind of lien, “statutory lien.” The definition, derived from current law, states that a statutory lien is a lien arising solely by force of statute on specified circumstances or conditions and includes a lien of distress for rent (whether statutory, common law, or otherwise). The definition excludes judicial liens and security interests, whether or not they are provided for or are dependent on a statute, and whether or not they are made fully effective by statute. A statutory lien is only one that arises automatically, and is not based on an agreement to give a lien or on judicial action. Mechanics’, materialmen’s, and warehousemen’s liens are examples. Tax liens are also included in the definition of statutory lien.

“Stockbroker” is defined in paragraph (39) [now (48)] as a person engaged in the business of effecting transactions in securities for the account of others or with members of the general public from or for such person’s own account, if the person has a customer, as defined. Thus, the definition, derived from a combination of the definitions of “broker” and “dealer” in the Securities Exchange Act of 1934 [section 77b of Title 15, Commerce and Trade], encompasses both brokers and dealers. The definition is used in section 109 and in subchapter III of chapter 7, Stockholder Liquidation. The term does not encompass an employee who acts for a principal that “effects” transaction or deals with the public, because such an employee will not have a “customer”.

Paragraph (40) [now (50)] defines “transfer.” It is derived and adapted, with stylistic changes, from section 1(30) of the Bankruptcy Act [former section 1(30) of this title]. A transfer is a disposition of an interest in property. The definition of transfer is as broad as possible. Many of the potentially limiting words in current law are deleted, and the language is simplified. Under this definition, any transfer of an interest in property is a transfer, including a transfer of possession, custody, or control even if there is no transfer of title, because possession, custody, and control are interests in property. A deposit in a bank account or similar account is a transfer.

Legislative Statements. Section 101(2) defines “affiliate.” The House amendment contains a provision that is a compromise between the definition in the House-passed version of H.R. 8200, subparagraphs (A) and (B) are derived from the Senate amendment and subparagraph (D) is taken from the House bill,

while subparagraph (C) represents a compromise, taking the House position with respect to a person whose business is operated under a lease or an operating agreement by the debtor and with respect to a person substantially all of whose property is operated under an operating agreement by the debtor and with respect to a person substantially all of whose property is operated under an operating agreement by the debtor and the Senate position on leased property. Thus, the definition of "affiliate" excludes persons substantially all of whose property is operated under a lease agreement by a debtor, such as a small company which owns equipment all of which is leased to a larger nonrelated company.

Section 101(4)(B) represents a modification of the House-passed bill to include the definition of "claim" a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment. This is intended to cause the liquidation or estimation of contingent rights of payment for which there may be an alternative equitable remedy with the result that the equitable remedy will be susceptible to being discharged in bankruptcy. For example, in some States, a judgment for specific performance may be satisfied by an alternative right to payment, in the event performance is refused; in that event, the creditor entitled to specific performance would have a "claim" for purposes of a proceeding under title 11.

On the other hand, rights to an equitable remedy for a breach of performance with respect to which such breach does not give rise to a right to payment are not "claims" and would therefore not be susceptible to discharge in bankruptcy.

In a case under chapter 9 to title 11, "claim" does not include a right to payment under an industrial development bond issued by a municipality as a matter of convenience for a third party.

Municipalities are authorized, under section 103(c) of the Internal Revenue Code of 1954, as amended [section 103(c) of Title 26, Internal Revenue Code], to issue tax-exempt industrial development revenue bonds to provide for the financing of certain projects for privately owned companies. The bonds are sold on the basis of the credit of the company on whose behalf they are issued, and the principal, interest, and premium, if any, are payable solely from payments made by the company to the trustee under the bond indenture and do not constitute claims on the tax revenues or other funds of the issuing municipalities. The mu-

nicipality merely acts as the vehicle to enable the bonds to be issued on a tax-exempt basis. Claims that arise by virtue of these bonds are not among the claims defined by this paragraph and amounts owed by private companies to the holders of industrial development revenue bonds are not to be included among the assets of the municipality that would be affected by the plan.

Section 101(6) defines "community claim" as provided by the Senate amendment in order to indicate that a community claim exists whether or not there is community property in the estate as of the commencement of the case.

Section 101(7) of the House amendment contains a definition of consumer debt identical to the definition in the House bill and Senate amendment. A consumer debt does not include a debt to any extent the debt is secured by real property.

Section 101(9) of the Senate amendment contained a definition of "court." The House amendment deletes the provision as unnecessary in light of the pervasive jurisdiction of a bankruptcy court under all chapters of title 11 as indicated in title II of the House amendment to H.R. 8200.

Section 101(11) defines "debt" to mean liability on a claim, as was contained in the House-passed version of H.R. 8200. The Senate amendment contained language indicating that "debt" does not include a policy loan made by a life insurance company to the debtor. That language is deleted in the House amendment as unnecessary since a life insurance company clearly has no right to have a policy loan repaid by the debtor, although such company does have a right of offset with respect to such policy loan. Clearly, then, a "debt" does not include a policy loan made by a life insurance company. Inclusion of the language contained in the Senate amendment would have required elaboration of other legal relationships not arising by a liability on a claim. Further the language would have required clarification that interest on a policy loan made by a life insurance company is a debt, and that the insurance company does have right to payment to that interest.

Section 101(14) adopts the definition of "entity" contained in the Senate-passed version of H.R. 8200. Since the Senate amendment to H.R. 8200 deleted the U.S. trustee, a corresponding definitional change is made in chapter 15 of the House amendment for U.S. trust-

ees under the pilot program. Adoption by the House amendment of a pilot program for U.S. trustees under chapter 15 requires insertion of "United States trustee" in many sections. Several provisions in chapter 15 of the House amendment that relate to the U.S. trustee were not contained in the Senate amendment in the nature of a substitute.

Section 101(17) defines "farmer," as in the Senate amendment with an income limitation percentage of 80 percent instead of 75 percent.

Section 101(18) contains a new definition of "farming operation" derived from present law and the definition of "farmer" in the Senate amendment. This definition gives a broad construction to the term "farming operation."

Section 101(20) contains a definition of "foreign representative". It clarifies the House bill and Senate amendment by indicating that a foreign representative must be duly selected in a foreign proceeding.

Section 101(35) [now (43)] defines "security" as contained in the Senate amendment. H.R. 8200 as adopted by the House excluded certain commercial notes from the definition of "security", and that exclusion is deleted.

Section 101(40) [now (50)] defines "transfer" as in the Senate amendment. The definition contained in H.R. 8200 as passed by the House included "setoff" in the definition of "transfer". Inclusion of "setoff" is deleted. The effect is that a "setoff" is not subject to being set aside as a preferential "transfer" but will be subject to special rules.

References in Text. The Investment Company Act of 1940, referred to in par. (22)(A)(ii), is Act Aug. 22, 1940, c. 686, Title I, 54 Stat. 789, as amended, which is principally classified to subchapter I of chapter 2D of this title, 15 U.S.C.A. § 80a-1 et seq.

Section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in par. (22)(B), is Pub.L. 102-242, Title IV, § 409, as added by Pub.L. 106-554, § 1(a)(5) [Title I, § 112(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763-, which is classified as 12 U.S.C.A. § 4422.

Section 3 of the Federal Deposit Insurance Act, referred to in pars. (21B)(A), (33)(A), (35)(A), and (54A) is Act Sept., 21, 1950, c. 967, § 2[3], 64 Stat. 873, which is classified to 12 U.S.C.A. § 1813.

Section 206 of the Federal Credit Union Act, referred to in par. (33)(B), is section 206 of Act June 26, 1934, c. 750, Title II, as added Oct.

19, 1970, Pub.L. 91-468, § 1(3), 84 Stat. 1003, which is classified to section 1786 of Title 12.

Section 101 of the Federal Credit Union Act, referred to in par. (34), is section 101 of Act June 26, 1934, c. 750, Title I, formerly § 2, 48 Stat. 1216, which is classified to section 1752 of Title 12.

Sections 414(d) and 457(b) of the Internal Revenue Code of 1986, referred to in par. (41)(C), are sections 414(d) and 457(b), respectively, of Title 26, Internal Revenue Code.

Section 17A of the Securities and Exchange Act of 1934, referred to in par. (48), is section 17A of Act June 6, 1934, c. 404, Title I, as added June 4, 1975, Pub.L. 94-29, § 15, 89 Stat. 141, which is classified to section 78q-1 of Title 15, Commerce and Trade.

Section 3 of the Securities and Exchange Act of 1934, referred to in par. (48), is section 3 of Act June 6, 1934, c. 404, Title I, 48 Stat. 882, which is classified to section 78c of Title 15.

The Securities Act of 1933, referred to in par. (49)(A)(xii), is Act May 27, 1933, c. 38, Title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (section 77a et seq.) of chapter 2A of Title 15, Commerce and Trade.

Section 3 of the Securities Act of 1933, referred to in pars. (49)(A)(xii) and (B)(vi), is section 3 of Act May 27, 1933, c. 38, Title I, 48 Stat. 75, which is classified to section 77c of Title 15.

2000 Amendments. Par. (22). Pub.L. 106-554, § 1(a)(5) [Title I, § 112(c)(3)], rewrote par. (22) read as follows:

"(22) 'financial institution' means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, or trust company and, when any such person is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, such customer;"

Par. (54A). Pub.L. 106-554, § 1(a)(5) [Title I, § 112(c)(4)], added par. (54A).

1994 Act. Pension benefit grantors and certain pension plans are included within the definition of a "person" (subsection (41)) for purposes of section 1102 of the Code. This section is intended to clarify that the Pension Benefit Guaranty Corporation and State employee pension funds are authorized to serve on chapter 11 committees.

Subsection (53B) is amended to confirm the market understanding that spot foreign exchange contracts are included in the term "swap agreement." It is expected that contracts that mature in a period of time equalling 2 days or less will fall under the umbrella of "swap agreements."

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

1992 Amendment. Pub.L. 102-486, § 3017(a) added the definition of "farmout agreement" in par. (21A).

Effective Date of 1992 Amendment. Pub.L. 102-486, § 3017(c), provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

"(2) The amendments made by this section shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act [Oct. 24, 1992]."

1986 Amendment. Par. (14). Pub.L. 99-554, § 201(1), substituted "trust, governmental unit, and United States trustee" for "trust, and governmental unit".

Par. (26). Pub.L. 99-554, § 201(2), substituted "of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State" for "of the United States, a State".

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1988 Amendments; Application of Amendments. Section 2 of Pub.L. 100-506 provided that:

"(a) Effective Date.—Except as provided in subsection (b), this Act and the amendments made by this Act [enacting par. (52) and par. (53) of this section and section 365(n) of this title] shall take effect on the date of the enactment of this Act [Oct. 18, 1988].

"(b) Application of Amendments.—The amendments made by this Act shall not apply with respect to any case commenced under title 11 of the United States Code [this title] before the date of the enactment of this Act [Oct. 18, 1988]."

Section 12 of Pub.L. 100-597 provided that:

"(a) Effective Date.—Except as provided in subsection (b), this Act and the amendments made by this Act [enacting sections 927 to 929 of this title, amending this section and sections 109, 901, 902, 922, 926 and 943 of this title, and renumbering former section 927 as 930 of this title] shall take effect on the date of the enactment of this Act [Nov. 3, 1988].

"(b) Application of Amendments.—The amendments made by this Act shall not apply with respect to cases commenced under title 11 of the United States Code [this title] before the date of the enactment of this Act [Nov. 3, 1988]."

Effective Date of 1986 Amendments; Savings Provisions; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial District in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11, Chapter 15, Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 251, not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 201, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see sec-

tion 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 201, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 201, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments, by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of

Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 201, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy § 2.

West's Key No. Digests, Bankruptcy ⇨2001, 2011, 2021.1, 2022.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 102. Rules of construction

In this title—

(1) “after notice and a hearing”, or a similar phrase—

(A) means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances; but

(B) authorizes an act without an actual hearing if such notice is given properly and if—

- (i) such a hearing is not requested timely by a party in interest; or
 - (ii) there is insufficient time for a hearing to be commenced before such act must be done, and the court authorizes such act;
- (2) “claim against the debtor” includes claim against property of the debtor;
- (3) “includes” and “including” are not limiting;
 - (4) “may not” is prohibitive, and not permissive;
 - (5) “or” is not exclusive;
 - (6) “order for relief” means entry of an order for relief;
 - (7) the singular includes the plural;
 - (8) a definition, contained in a section of this title that refers to another section of this title, does not, for the purpose of such reference, affect the meaning of a term used in such other section; and
 - (9) “United States trustee” includes a designee of the United States trustee.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2554; Pub.L. 98-353, Title III, § 422, July 10, 1984, 98 Stat. 369; Pub.L. 99-554, Title II, § 202, Oct. 27, 1986, 100 Stat. 3097.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 102 provides seven rules of construction. Some are derived from current law; others are derived from 1 U.S.C. 1 [section 1 of Title 1, General Provisions]; a few are new. They apply generally throughout proposed title 11. These are terms that are not appropriate for definition, but that require an explanation.

Paragraph (1) defines the concept of “after notice and a hearing.” The concept is central to the bill and to the separation of the administrative and judicial functions of bankruptcy judges. The phrase means after such notice as is appropriate in the particular circumstances (to be prescribed by either the Rules of Bankruptcy Procedure or by the court in individual circumstances that the Rules do not cover. In many cases, the Rules will provide for combined notice of several proceedings), and such opportunity for a hearing as is appropriate in the particular circumstances. Thus, a hearing will not be necessary in every instance. If there is no objection to the proposed action, the action may go ahead without court action. This is a significant change from present law,

which requires the affirmative approval of the bankruptcy judge for almost every action. The change will permit the bankruptcy judge to stay removed from the administration of the bankruptcy or reorganization case, and to become involved only when there is a dispute about a proposed action, that is, only when there is an objection. The phrase “such opportunity for a hearing as is appropriate in the particular circumstances” is designed to permit the Rules and the courts to expedite or dispense with hearings when speed is essential. The language “or similar phrase” is intended to cover the few instances in the bill where “after notice and a hearing” is interrupted by another phrase, such as “after notice to the debtor and a hearing.”

Paragraph (2) specifies that “claim against the debtor” includes claim against property of the debtor. This paragraph is intended to cover nonrecourse loan agreements where the creditor’s only rights are against property of the debtor, and not against the debtor personally. Thus, such an agreement would give rise to a claim that would be treated as a claim

against the debtor personally, for the purposes of the bankruptcy code [this title].

Paragraph (3) is a codification of *American Surety Co. v. Marotta*, 287 U.S. 513 (1933) [53 S.Ct. 260, 77 L.Ed. 466]. It specifies that “includes” and “including” are not limiting.

Paragraph (4) specifies that “may not” is prohibitive and not permissive (such as in “might not”).

Paragraph (5) specifies that “or” is not exclusive. Thus, if a party “may do (a) or (b)”, then the party may do either or both. The party is not limited to a mutually exclusive choice between the two alternatives.

Paragraph (6) makes clear that “order for relief” means entry of an order for relief. If the court orally orders relief, but the order is not entered until a later time, then any time measurements in the bill are from entry, not from the oral order. In a voluntary case, the entry of the order for relief is the filing of the petition commencing the voluntary case.

Paragraph (7) specifies that the singular includes the plural. The plural, however, generally does not include the singular. The bill uses only the singular, even when the item in question most often is found in plural quantities, in order to avoid the confusion possible if both rules of construction applied. When an item is specified in the plural, the plural is intended.

Legislative Statements. Section 102 specifies various rules of construction but is not exclusive. Other rules of construction that are not set out in title 11 are nevertheless intended to be followed in construing the bankruptcy code [this title]. For example, the phrase “on request of a party in interest” or a similar phrase, is used in connection with an action that the court may take in various sections of the Code. The phrase is intended to restrict the court from acting *sua sponte*. Rules of bankruptcy procedure or court decisions will determine who is a party in interest for the particular purposes of the provision in question, but the court will not be permitted to act on its own.

Although “property” is not construed in this section, it is used consistently throughout the code in its broadest sense, including cash, all interests in property, such as liens, and every kind of consideration including promises to act or forbear to act as in section 548(d).

Section 102(1) expands on a rule of construction contained in H.R. 8200 as passed by the

House and in the Senate amendment. The phrase “after notice and a hearing”, or a similar phrase, is intended to be construed according to the particular proceeding to mean after such notice as is appropriate in the particular circumstances, and such opportunity, if any, for a hearing as is appropriate in the particular circumstances. If a provision of title 11 authorizes an act to be taken “after notice and a hearing” this means that if appropriate notice is given and no party to whom such notice is sent timely requests a hearing, then the act sought to be taken may be taken without an actual hearing.

In very limited emergency circumstances, there will be insufficient time for a hearing to be commenced before an action must be taken. The action sought to be taken may be taken if authorized by the court at an *ex parte* hearing of which a record is made in open court. A full hearing after the fact will be available in such an instance.

In some circumstances, such as under section 1128, the bill requires a hearing and the court may act only after a hearing is held. In those circumstances the judge will receive evidence before ruling. In other circumstances, the court may take action “after notice and a hearing,” if no party in interest requests a hearing. In that event a court order authorizing the action to be taken is not necessary as the ultimate action taken by the court implies such an authorization.

Section 102(8) is new. It contains a rule of construction indicating that a definition contained in a section in title 11 that refers to another section of title 11 does not, for the purposes of such reference, take the meaning of a term used in the other section. For example, section 522(a)(2) defines “value” for the purposes of section 522. Section 548(d)(2) defines “value” for purposes of section 548. When section 548 is incorporated by reference in section 522, this rule of construction makes clear that the definition of “value” in section 548 governs its meaning in section 522 notwithstanding a different definition of “value” in section 522(a)(2).

1986 Amendment. Par. (9). Pub.L. 99-554, § 202, added par. (9).

See Effective Date of 1986 Amendment, etc., notes set out below.

**Effective Date of 1986 Amendments;
Effective Date of 1986 Amendments for
Certain Judicial Districts Not Served by**

United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11, Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 202, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-54, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 202, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 202, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect

to cases under chapters 7, 11, 12 and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 202, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy § 2.

West's Key No. Digests, Bankruptcy ⇨2021.1. 2022.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 103. Applicability of chapters

(a) Except as provided in section 1161 of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title.

(b) Subchapters I and II of chapter 7 of this title apply only in a case under such chapter.

(c) Subchapter III of chapter 7 of this title applies only in a case under such chapter concerning a stockbroker.

(d) Subchapter IV of chapter 7 of this title applies only in a case under such chapter concerning a commodity broker.

(e) Scope of application.—Subchapter V of chapter 7 of this title shall apply only in a case under such chapter concerning the liquidation of an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(f) Except as provided in section 901 of this title, only chapters 1 and 9 of this title apply in a case under such chapter 9.

(g) Except as provided in section 901 of this title, subchapters I, II, and III of chapter 11 of this title apply only in a case under such chapter.

(h) Subchapter IV of chapter 11 of this title applies only in a case under such chapter concerning a railroad.

(i) Chapter 13 of this title applies only in a case under such chapter.

(j) Chapter 12 of this title applies only in a case under such chapter.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2555; Pub.L. 97-222, § 2, July 27, 1982, 96 Stat. 235; Pub.L. 98-353, Title III, § 423, July 10, 1984, 98 Stat. 369; Pub.L. 99-554, Title II, § 252, Oct. 27, 1986, 100 Stat. 3104; Pub.L. 106-554, § 1(a)(5) [Title I, § 112(c)(5)(A)], Dec. 21, 2000, 114 Stat. 2763, 2763-.

Historical and Revision Notes

2000 Amendments. Subsecs. (e) to (j). Pub.L. 106-554, § 1(a)(5) [Title I, § 112(c)(5)(A)], added subsec. (e), and redesignated former subsecs.(e) through (i) as (f) through (j), respectively.

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 103 prescribes which chapters of the proposed bankruptcy code apply in various cases. All cases, other than cases ancillary to foreign proceedings, are filed under chapter 7, 9, 11, or 13, the operative chapters of the proposed bankruptcy code [this title]. The general provisions that apply no matter which chapter a case is filed under are found in chapters 1, 3, and 5. Sub-

section (a) makes this explicit, with an exception for chapter 9. The other provisions, which are self-explanatory, provide the special rules for Stockbroker Liquidations, Commodity Broker Liquidations, Municipal Debt Adjustments, and Railroad Reorganizations.

Effective Date of 1986 Amendments. Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 252, not to apply with respect to cases commenced un-

der Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an

Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Confirmation in chapter 9 cases upon compliance with provisions of this title made applicable by this section, see section 943.

Meanings of terms in sections made applicable to chapter 9 by this section, see section 901.

Property of estate and trustee defined when used in sections made applicable to cases under chapter 9 by this section, see section 902.

Library References:

C.J.S. Bankruptcy §§ 37, 41.

West's Key No. Digests, Bankruptcy Ⓒ2201, 2203.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 104. Adjustment of dollar amounts

(a) The Judicial Conference of the United States shall transmit to the Congress and to the President before May 1, 1985, and before May 1 of every sixth year after May 1, 1985, a recommendation for the uniform percentage adjustment of each dollar amount in this title and in section 1930 of title 28.

(b)(1) On April 1, 1998, and at each 3-year interval ending on April 1 thereafter, each dollar amount in effect under sections 109(e), 303(b), 507(a), 522(d), and 523(a)(2)(C) immediately before such April 1 shall be adjusted—

(A) to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such April 1, and

(B) to round to the nearest \$25 the dollar amount that represents such change.

(2) Not later than March 1, 1998, and at each 3-year interval ending on March 1 thereafter, the Judicial Conference of the United States shall publish in the Federal Register the dollar amounts that will become effective on such April 1 under sections 109(e), 303(b), 507(a), 522(d), and 523(a)(2)(C) of this title.

(3) Adjustments made in accordance with paragraph (1) shall not apply with respect to cases commenced before the date of such adjustments.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2555; Pub.L. 103-394, Title I, § 108(e), October 22, 1994, 108 Stat. 4112.

Historical and Revision Notes

1978 Acts. This section requires that the Director of the Administrative Office of the U.S. Courts report to Congress and the President before Oct. 1, 1985, and before May 1 every 6 years thereafter a recommendation for adjustment in dollar amounts found in this title. The Committee feels that regular adjustment of the dollar amounts by the Director will conserve congressional time and yet assure that the relative dollar amounts used in the bill are maintained. Changes in the cost of living should be a significant, but not necessarily the only, factor considered by the Director. The fact that there has been an increase in the cost of living does not necessarily mean that an adjustment of dollar amounts would be needed or warranted. Senate Report No. 95-989.

This section requires the Judicial Conference to report to the Congress every four years after the effective date of the bankruptcy code any changes that have occurred in the cost of living during the preceding four years, and the appropriate adjustments to the dollar amounts in the bill. The dollar amounts are found primarily in the exemption section (11 U.S.C. 522), the wage priority (11 U.S.C. 507), and the eligibility for chapter 13 (11 U.S.C. 109). This section requires that the Conference recommend uniform percentage changes in these amounts based solely on cost of living changes. The dollar amounts in the bill would not change on that recommendation, absent Congressional veto. Instead, Congress is required to take affirmative action, by passing a law amending the appropriate section, if it wishes to accomplish the change.

If the Judicial Conference has policy recommendations concerning the appropriate dollar amounts in the bankruptcy code based other than on cost of living considerations there are adequate channels through which it may communicate its views. This section is solely for the housekeeping function of maintaining the dollar amounts in the code at fairly constant real dollar levels. House Report No. 95-595.

1994 Acts. House Report No. 103-835, see 1994 U.S. Code Cong. and Adm. News, p. 3340.

Legislative Statements. Section 104 represents a compromise between the House bill and the Senate amendment with respect to the adjustment of dollar amounts in title 11. The House amendment authorizes the Judicial Conference of the United States to transmit a recommendation for the uniform percentage of adjustment for each dollar amount in title 11 and in 28 U.S.C. 1930 to the Congress and to the President before May 1, 1985, and before May 1 of every sixth year thereafter. The requirement in the House bill that each such recommendation be based only on any change in the cost-of-living increase during the period immediately preceding the recommendation is deleted.

Amendments

1994 Amendments. Subsec. (a). Pub.L. 103-394, § 108(e)(1), designated existing provisions as subsec. (a).

Subsec. (b). Pub.L. 103-394, § 108(e)(2), added subsec. (b).

Effective Dates

1994 Acts. Amendment by Pub.L. 103-394 effective on Oct. 22, 1994, and not to apply with respect to cases commenced under Title 11 of the United States Code before Oct. 22, 1994, see section 702 of Pub.L. 103-394.

Separability of Provisions. If any provision of or amendment made by Pub.L. 103-394 or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remaining provisions of and amendments made by Pub.L. 103-394 and the application of such provisions and amendments to any person or circumstance shall not be affected thereby, see section 701 of Pub.L. 103-394.

Adjustment of Dollar Amounts

By notice dated Feb. 3, 1998, 63 F.R. 7179, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (b) of this section, effective Apr. 1, 1998, as follows:

11 U.S.C.	Dollar Amount to be Adjusted	New (Adjusted) Dollar Amount
Section 109(e)—allowable debt limits for filing bankruptcy under Chapter 13	\$250,000 (each time it appears)	\$269,250 (each time it appears)
	\$750,000 (each time it appears)	\$807,750 (each time it appears)

11 U.S.C.	Dollar Amount to be Adjusted	New (Adjusted) Dollar Amount
Section 303(b)—minimum aggregate claims needed for the commencement of an involuntary bankruptcy		
(1)—in paragraph (1)	\$10,000	\$10,775
(2)—in paragraph (2)	\$10,000	\$10,775
Section 507(a)—priority claims		
(1)—in paragraph (3)	\$ 4,000	\$ 4,300
(2)—in paragraph (4)(B)(i)	\$ 4,000	\$ 4,300
(3)—in paragraph (5)	\$ 4,000	\$ 4,300
(4)—in paragraph (6)	\$ 1,800	\$ 1,950
Section 522(d)—value of property exemptions allowed to the debtor		
(1)—in paragraph (1)	\$15,000	\$16,150
(2)—in paragraph (2)	\$ 2,400	\$ 2,575
(3)—in paragraph (3)	\$ 400	\$ 425
	\$ 8,000	\$ 8,625
(4)—in paragraph (4)	\$ 1,000	\$ 1,075
(5)—in paragraph (5)	\$ 800	\$ 850
	\$ 7,500	\$ 8,075
(6)—in paragraph (6)	\$ 1,500	\$ 1,625
(7)—in paragraph (8)	\$ 8,000	\$ 8,625
(8)—in paragraph (11)(D)	\$15,000	\$16,150
Section 523(a)(2)(C)—“luxury goods and services” or cash advances obtained by the consumer debtor within 60 days before the filing of a bankruptcy petition, which are considered non-dischargeable	\$1,000 (each time it appears)	\$1,075 (each time it appears)

§ 105. Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest, may—

(1) hold a status conference regarding any case or proceeding under this title after notice to the parties in interest; and

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title—

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan;

(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;

(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2555; Pub.L. 98-353, Title I, § 118, July 10, 1984, 98 Stat. 344; Pub.L. 99-554, Title II, § 203, Oct. 27, 1986, 100 Stat. 3097; Pub.L. 103-394, Title I, § 104(a), October 22, 1994, 108 Stat. 4108.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 105 is derived from section 2a(15) of present law [former section 11a(15) of this title], with two changes. First, the limitation on the power of a bankruptcy judge (the power to enjoin a court being reserved to the district judge) is removed as inconsistent with the increased powers and jurisdiction of the new bankruptcy court. Second, the bankruptcy judge is prohibited from appointing a receiver in a case under title 11 under any circumstances. The bankruptcy code [this title] has ample provision for the appointment of a trustee when needed. Appointment of a receiver would simply circumvent the established procedures.

This section is also an authorization, as required under 28 U.S.C. 2283 [section 2283 of Title 28, Judiciary and Judicial Procedure], for a court of the United States to stay the action of a State court. As such, *Toucey v. New York Life Insurance Company*, 314 U.S. 118 (1941) [62 S.Ct. 139, 86 L.Ed. 100, 137 A.L.R. 967], is overruled.

1994 Act. The amendment adds subsection (d), authorizing bankruptcy court judges to hold status conferences in bankruptcy cases and thereby manage their dockets in a more efficient and expeditious manner. Notwith-

standing the adoption of Bankruptcy Rule 7016 (relating to pretrial conferences), some judges have appeared reluctant to do so without clear and explicit statutory authorization. This provision clarifies that such authority exists in the Bankruptcy Code in adversary and nonadversary proceedings.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act.”

1986 Amendment. Subsec. (a). Pub.L. 99-554, § 203, added “No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process” following “of this title”.

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees for Judicial Dis-

tricts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 203, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 9-554, § 203, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 203, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, except that the amendment to subsec. (a) of this sec-

tion shall become effective as of Dec. 1, 1990, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 203 except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments.

For effective date of amendments by Title I of Pub.L. 98-353, see section 122 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 346, set out as an Effective Date of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy §§ 5, 9.

West's Key No. Digests, Bankruptcy ⇨2124.1-2126.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 106. Waiver of sovereign immunity

(a) Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following:

(1) Sections 105, 106, 107, 108, 303, 346, 362, 363, 364, 365, 366, 502, 503, 505, 506, 510, 522, 523, 524, 525, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 722, 724, 726, 728, 744, 749, 764, 901, 922, 926, 928, 929, 944, 1107, 1141, 1142, 1143, 1146, 1201, 1203, 1205, 1206, 1227, 1231, 1301, 1303, 1305, and 1327 of this title.

(2) The court may hear and determine any issue arising with respect to the application of such sections to governmental units.

(3) The court may issue against a governmental unit an order, process, or judgment under such sections or the Federal Rules of Bankruptcy Procedure, including an order or judgment awarding a money recovery, but not including an award of punitive damages. Such order or judgment for costs or fees under this title or the Federal Rules of Bankruptcy Procedure against any governmental unit shall be consistent with the provisions and limitations of section 2412(d)(2)(A) of title 28.

(4) The enforcement of any such order, process, or judgment against any governmental unit shall be consistent with appropriate nonbankruptcy law applicable to such governmental unit and, in the case of a money judgment against the United States, shall be paid as if it is a judgment rendered by a district court of the United States.

(5) Nothing in this section shall create any substantive claim for relief or cause of action not otherwise existing under this title, the Federal Rules of Bankruptcy Procedure, or nonbankruptcy law.

(b) A governmental unit that has filed a proof of claim in the case is deemed to have waived sovereign immunity with respect to a claim against such governmental unit that is property of the estate and that arose out of the same transaction or occurrence out of which the claim of such governmental unit arose.

(c) Notwithstanding any assertion of sovereign immunity by a governmental unit, there shall be offset against a claim or interest of a governmental unit any claim against such governmental unit that is property of the estate.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2555; Pub.L. 103-394, Title I, § 113, October 22, 1994, 108 Stat. 4117.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 106 provides for a limited waiver of sovereign immunity in bankruptcy cases. Though Congress has the power to waive sovereign immunity for the Federal government completely in bankruptcy cases, the policy followed here is designed to

achieve approximately the same result that would prevail outside of bankruptcy. Congress does not, however, have the power to waive sovereign immunity completely with respect to claims of a bankrupt estate against a State, though it may exercise its bankruptcy power through the supremacy clause to prevent or

prohibit State action that is contrary to bankruptcy policy.

There is, however, a limited change from the result that would prevail in the absence of bankruptcy; the change is two-fold and is within Congress' power vis-a-vis both the Federal Government and the States. First, the filing of a proof of claim against the estate by a governmental unit is a waiver by that governmental unit of sovereign immunity with respect to compulsory counterclaims, as defined in the Federal Rules of Civil Procedure [Title 28, Judiciary and Judicial Procedure], that is, counterclaims arising out of the same transaction or occurrence. The governmental unit cannot receive a distribution from the estate without subjecting itself to any liability it has to the estate within the confines of a compulsory counterclaim rule. Any other result would be one-sided. The counterclaim by the estate against the governmental unit is without limit.

Second, the estate may offset against the allowed claim of a governmental unit, up to the amount of the governmental unit's claim, any claim that the debtor, and thus the estate, has against the governmental unit, without regard to whether the estate's claim arose out of the same transaction or occurrence as the governmental unit's claim. Under this provision, the setoff permitted is only to the extent of the governmental unit's claim. No affirmative recovery is permitted. Subsection (a) governs affirmative recovery.

Though this subsection creates a partial waiver of immunity when the governmental unit files a proof of claim, it does not waive immunity if the debtor or trustee, and not the governmental unit, files proof of a governmental unit's claim under proposed 11 U.S.C. 501(c).

This section does not confer sovereign immunity on any governmental unit that does not already have immunity. It simply recognizes any immunity that exists and prescribes the proper treatment of claims by and against that sovereign.

Legislative Statements. Section 106(c) relating to sovereign immunity is new. The provision indicates that the use of the term "creditor," "entity," or "governmental unit" in title 11 applies to governmental units not-

withstanding any assertion of sovereign immunity and that an order of the court binds governmental units. The provision is included to comply with the requirement in case law that an express waiver of sovereign immunity is required in order to be effective. Section 106(c) codifies *In re Gwilliam*, 519 F.2d 407 (9th Cir., 1975), and *In re Dolard*, 519 F.2d 282 (9th Cir., 1975), permitting the bankruptcy court to determine the amount and dischargeability of tax liabilities owing by the debtor or the estate prior to or during a bankruptcy case whether or not the governmental unit to which such taxes are owed files a proof of claim. Except as provided in sections 106(a) and (b) subsection (c) is not limited to those issues, but permits the bankruptcy court to bind governmental units on other matters as well. For example, section 106(c) permits a trustee or debtor in possession to assert avoiding powers under title 11 against a governmental unit; contrary language in the House report to H.R. 8200 is thereby overruled.

1994 Act. Subsection (b) is clarified by allowing a compulsory counterclaim to be asserted against a governmental unit only where such unit has actually filed a proof of claim in the bankruptcy case. This has the effect of overruling contrary case law, such as *Sullivan v. Town & Country Nursing Home Services, Inc.*, 963 F.2d 1146 (9th Cir.1992); *In re Gribben*, 158 B.R. 920 (S.D.N.Y.1993); and *In re the Craftsman, Inc.*, 163 B.R. 88 (Bankr. W.D.Tex.1994).

The amendment to subsection (c) expressly provides for a waiver of sovereign immunity by governmental units with respect to monetary recoveries as well as declaratory and injunctive relief. It effectively overrules *Hoffman v. Connecticut Department of Income Maintenance*, 492 U.S. 96 (1989) and *United States v. Nordic Village, Inc.*, 112 S.Ct. 1011 (1992).

Effective Date of 1994 Amendments. Section 702(b)(2)(B) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "The amendments made by sections 113 and 117 shall apply with respect to cases commenced under title 11 of the United States Code before, on, and after the date of the enactment of this Act [October 22, 1994]."

Library References:

C.J.S. Bankruptcy §§ 15, 245.
West's Key No. Digests, Bankruptcy ⇨2679.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 107. Public access to papers

(a) Except as provided in subsection (b) of this section, a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge.

(b) On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or

(2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2556.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) of this section makes all papers filed in a bankruptcy case and the dockets of the bankruptcy court public and open to examination at reasonable times without charge. "Docket" includes the claims docket, the proceedings docket, and all papers filed in a case.

Subsection (b) permits the court, on its own motion, and requires the court, on the request of a party in interest, to protect trade secrets, confidential research, development, or commercial information, and to protect persons against scandalous or defamatory matter.

Library References:

C.J.S. Records § 35 et seq.

West's Key No. Digests, Records ⇨32.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 108. Extension of time

(a) If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of—

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) two years after the order for relief.

(b) Except as provided in subsection (a) of this section, if applicable nonbankruptcy law, ~~an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor or an individual protected under section 1201 or 1301 of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of—~~

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 60 days after the order for relief.

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2556; Pub.L. 98-353, Title III, § 424, July 10, 1984, 98 Stat. 369; Pub.L. 99-554, Title II, § 257(b)(1), Oct. 27, 1986, 100 Stat. 3114.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsections (a) and (b), derived from Bankruptcy Act section 11 [former section 29 of this title], permit the trustee, when he steps into the shoes of the debtor, an extension of time for filing an action or doing some other act that is required to preserve the debtor's rights. Subsection (a) extends any statute of limitation for commencing or continuing an action by the debtor for two years after the date of the order for relief, unless it would expire later. Subsection (b) gives the trustee 60 days to take other actions not covered under subsection (a), such as filing a pleading demand, notice, or proof of claim or loss (such as an insurance claim), unless the period for doing the relevant act expires later than 60 days after the date of the order for relief.

Subsection (c) extends the statute of limitations for creditors. Thus, if a creditor is stayed from commencing or continuing an action against the debtor because of the bankruptcy case, then the creditor is permitted an additional 30 days after notice of the event by which the stay is terminated, whether that event be relief from the automatic stay under proposed 11 U.S.C. 362 or 1301, the closing of the bankruptcy case (which terminates the stay), or the exception from discharge of the debts on which the creditor claims.

In the case of Federal tax liabilities, the Internal Revenue Code [Title 26] suspends the statute of limitations on a tax liability of a taxpayer from running while his assets are in the control or custody of a court and for 6

months thereafter (sec. 6503(b) of the Code) [section 6503(b) of Title 26, Internal Revenue Code]. The amendment applies this rule in a title 11 proceeding. Accordingly, the statute of limitations on collection of a nondischargeable Federal tax liability of a debtor will resume running after 6 months following the end of the period during which the debtor's assets are in the control or custody of the bankruptcy court. This rule will provide the Internal Revenue Service adequate time to collect nondischargeable taxes following the end of title 11 proceedings.

Legislative Statements. The House amendment adopts section 108(c)(1) of the Senate amendment which expressly includes any special suspensions of statutes of limitation periods on collection outside bankruptcy when assets are under the authority of a court. For example, section 6503(b) of the Internal Revenue Code [section 6503(b) of Title 26, Internal Revenue Code] suspends collection of tax liabilities while the debtor's assets are in the control or custody of a court, and for 6 months thereafter. By adopting the language of the Senate amendment, the House amendment insures not only that the period for collection of the taxes outside bankruptcy will not expire during the title 11 proceedings, but also that such period will not expire until at least 6 months thereafter, which is the minimum suspension period provided by the Internal Revenue Code.

Codification. Amendment by Pub.L. 99-554, § 257(b)(2)(B), has been executed to text

following “922” as the probable intent of Congress, notwithstanding directory language requiring execution of amendment following “722”.

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(b), not to apply with respect to cases commenced

under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy §§ 29, 161.

West's Key No. Digests, Bankruptcy ⇨2132, 2157, 2722.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 109. Who may be a debtor

(a) Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title.

(b) A person may be a debtor under chapter 7 of this title only if such person is not—

(1) a railroad;

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958, a small business investment company licensed by the Small Business Administration under subsection (c) or (d) of section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act, except that an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or

(3) a foreign insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, or credit union, engaged in such business in the United States.

(c) An entity may be a debtor under chapter 9 of this title if and only if such entity—

(1) is a municipality;

(2) is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter;

(3) is insolvent;

(4) desires to effect a plan to adjust such debts; and

(5)(A) has obtained the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;

(B) has negotiated in good faith with creditors and has failed to obtain the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;

(C) is unable to negotiate with creditors because such negotiation is impracticable; or

(D) reasonably believes that a creditor may attempt to obtain a transfer that is avoidable under section 547 of this title.

(d) Only a railroad, a person that may be a debtor under chapter 7 of this title (except a stockbroker or a commodity broker), and an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor under chapter 11 of this title.

(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$250,000¹ and noncontingent, liquidated, secured debts of less than \$750,000¹, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$250,000¹ and noncontingent, liquidated, secured debts of less than \$750,000¹ may be a debtor under chapter 13 of this title.

(f) Only a family farmer with regular annual income may be a debtor under chapter 12 of this title.

(g) Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if—

(1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or

(2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

(As amended Pub.L. 103-394, Title I, § 108(a), Title II, § 220, Title IV, § 402, Title V, § 501(d)(2), Oct. 22, 1994, 108 Stat. 4111, 4129, 4141, 4143; Pub.L. 106-554, § 1(a)(5) [Title I, § 112(c)(1), (2)], (8) [§ 1(e)], Dec. 21, 2000, 114 Stat. 2763, 2763—.)

Historical and Revision Notes

1978 Acts. This section specifies eligibility to be a debtor under the bankruptcy laws. The first criterion, found in the current Bankruptcy Act section 2a(1) [section 11(a)(1) of former Title 11] requires that the debtor reside or have a domicile, a place of business, or property in the United States.

Subsection (b) defines eligibility for liquidation under chapter 7. All persons are eligible except insurance companies, and certain banking institutions. These exclusions are contained in current law. However, the banking institution exception is expanded in light of changes in various banking laws since the current law was last amended on this point. A change is also made to clarify that the bankruptcy laws cover foreign banks and insurance companies not engaged in the banking or insurance business in the United States but having assets in the United States. Banking institutions and insurance companies engaged in business in this country are excluded from liquidation under the bankruptcy laws because they are bodies for which alternate provision is made for their liquidation under various State or Federal regulatory laws. Conversely, when a foreign bank or insurance company is not engaged in the banking or insurance business in the United States, then those regulatory laws do not apply, and the bankruptcy laws are the only ones available for administration of any assets found in United States.

The first clause of subsection (b) provides that a railroad is not a debtor except where the requirements of section 1174 are met.

Subsection (c) provides that only a person who may be a debtor under chapter 7 and a railroad may also be a debtor under chapter 11, but a stockbroker or commodity broker is eligible for relief only under chapter 7. Subsection (d) establishes dollar limitations on the amount of indebtedness that an individual with regular income can incur and yet file under chapter 13. Senate Report No. 95-989.

Subsection (c) defines eligibility for chapter 9. Only a municipality that is unable to pay its debts as they mature, and that is not prohibited by State law from proceeding under chapter 9, is permitted to be a chapter 9 debtor. The subsection is derived from Bankruptcy Act section 84 [section 404 of former Title 11], with two changes. First, section 84 requires that the municipality be "generally authorized to file a petition under this chapter by the legislature, or by a governmental officer or organization

empowered by State law to authorize the filing of a petition." The "generally authorized" language is unclear, and has generated a problem for a Colorado Metropolitan District that attempted to use chapter IX [chapter 9 of former Title 11] in 1976. The "not prohibited" language provides flexibility for both the States and the municipalities involved, while protecting State sovereignty as required by *Ashton v. Cameron County Water District No. 1*, 298 U.S. 513 (1936) [56 S.Ct. 892, 80 L.Ed. 1309, 31 Am.Bankr.Rep.N.S. 96, rehearing denied 57 S.Ct. 5, 299 U.S. 619, 81 L.Ed. 457] and *Bekins v. United States*, 304 U.S. 27 (1938) [58 S.Ct. 811, 82 L.Ed. 1137, 36 Am.Bankr.Rep.N.S. 187, rehearing denied 58 S.Ct. 1043, 1044, 304 U.S. 589, 82 L.Ed. 1549].

The second change deletes the four prerequisites to filing found in section 84 [section 404 of former Title 11]. The prerequisites require the municipality to have worked out a plan in advance, to have attempted to work out a plan without success, to fear that a creditor will attempt to obtain a preference, or to allege that prior negotiation is impracticable. The loopholes in those prerequisites are larger than the requirement itself. It was a compromise from pre-1976 chapter IX [chapter 9 of former Title 11] under which a municipality could file only if it had worked out an adjustment plan in advance. In the meantime, chapter IX protection was unavailable. There was some controversy at the time of the enactment of current chapter IX concerning deletion of the pre-negotiation requirement. It was argued that deletion would lead to a rash of municipal bankruptcies. The prerequisites now contained in section 84 were inserted to assuage that fear. They are largely cosmetic and precatory, however, and do not offer any significant deterrent to use of chapter IX. Instead, other factors, such as a general reluctance on the part of any debtor, especially a municipality, to use the bankruptcy laws, operates as a much more effective deterrent against capricious use.

Subsection (d) permits a person that may proceed under chapter 7 to be a debtor under chapter 11. Reorganization, with two exceptions. Railroads, which are excluded from chapter 7, are permitted to proceed under chapter 11. Stockbrokers and commodity brokers, which are permitted to be debtors under chapter 7, are excluded from chapter 11. The spe-

cial rules for treatment of customer accounts that are the essence of stockbroker and commodity broker liquidations are available only in chapter 7. Customers would be unprotected under chapter 11. The special protective rules are unavailable in chapter 11 because their complexity would make reorganization very difficult at best, and unintelligible at worst. The variety of options available in reorganization cases make it extremely difficult to reorganize and continue to provide the special customer protection necessary in these cases.

Subsection (e) specifies eligibility for chapter 13, Adjustment of Debts of an Individual with Regular Income. An individual with regular income, or an individual with regular income and the individual's spouse, may proceed under chapter 13. As noted in connection with the definition of the term "individual with regular income", this represents a significant departure from current law. The change might have been too great, however, without some limitation. Thus, the debtor (or the debtor and spouse) must have unsecured debts that aggregate less than \$100,000, and secured debts that aggregate less than \$500,000. These figures will permit the small sole proprietor, for whom a chapter 11 reorganization is too cumbersome a procedure, to proceed under chapter 13. It does not create a presumption that any sole proprietor within that range is better off in chapter 13 than chapter 11. The conversion rules found in section 1307 will govern the appropriateness of the two chapters for any particular individual. The figures merely set maximum limits.

Whether a small business operated by a husband and wife, the so-called "mom and pop grocery store," will be a partnership and thus excluded from chapter 13, or a business owned by an individual, will have to be determined on the facts of each case. Even if partnership papers have not been filed, for example, the issue will be whether the assets of the grocery store are for the benefit of all creditors of the debtor or only for business creditors, and whether such assets may be the subject of a chapter 13 proceeding. The intent of the section is to follow current law that a partnership by estoppel may be adjudicated in bankruptcy and therefore would not prevent a chapter 13 debtor from subjecting assets in such a partnership to the reach of all creditors in a chapter 13 case. However, if the partnership is found to be a partnership by agreement, even informal agreement, then a separate entity exists and the assets of that entity would be

exempt from a case under chapter 13. House Report No. 95-595.

1982 Acts. Senate Report No. 97-536 and Senate Conference Report No. 97-641, see 1982 U.S.Code Cong. and Adm. News, p. 3054.

1984 Acts. Statements by Legislative Leaders, see 1984 U.S.Code Cong. and Adm. News, p. 576.

1986 Acts. House Report No. 99-764 and House Conference Report No. 99-958, see 1986 U.S.Code Cong. and Adm. News, p. 5227.

1988 Acts. House Report No. 100-1011, see 1988 U.S.Code Cong. and Adm. News, p. 4115.

1994 Acts. House Report No. 103-835, see 1994 U.S. Code Cong. and Adm. News, p. 3340.

2000 Acts. House Report No. 106-645 and Statement by President, see 2000 U.S. Code Cong. and Adm. News, p. 2459.

Legislative Statements. Section 109(b) of the House amendment adopts a provision contained in H.R. 8200 as passed by the House. Railroad liquidations will occur under chapter 11, not chapter 7.

Section 109(c) contains a provision which tracks the Senate amendment as to when a municipality may be a debtor under chapter 11 of title 11. As under the Bankruptcy Act [former Title 11], State law authorization and prepetition negotiation efforts are required.

Section 109(e) represents a compromise between H.R. 8200 as passed by the House and the Senate amendment relating to the dollar amounts restricting eligibility to be a debtor under chapter 13 of title 11. The House amendment adheres to the limit of \$100,000 placed on unsecured debts in H.R. 8200 as passed by the House. It adopts a midpoint of \$350,000 as a limit on secured claims, a compromise between the level of \$500,000 in H.R. 8200 as passed by the House and \$200,000 as contained in the Senate amendment.

References in Text. Section 351 of the Small Business Investment Act of 1958, referred to in subsec. (b)(2), is section 351 of Pub.L. 85-699, which is classified to section 689 of Title 15.

Subsection (c) or (d) of section 301 of the Small Business Investment Act of 1958, referred to in subsec. (b)(2), is subsection (c) or (d) of section 301 of Pub.L. 85-699, Title III, Aug. 21, 1958, which is classified to section 681(c) or (d) of Title 15, Commerce and Trade.

Section 3 of the Federal Deposit Insurance Act, referred to in subsec. (b)(2), is section 2(3) of Act Sept. 21, 1950, c. 967, 64 Stat. 873, which is classified to section 1813 of Title 12, Banks and Banking.

Amendments

2000 Amendments. Subsec. (b)(2). Pub.L. 106-554, § 1(a)(8)[§ 1(e)], inserted “a New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958,” after “homestead association”.

Pub.L. 106-554, § 1(a)(5) [Title I, § 112(c)(1)], struck “; or” and inserted the following: “, except that an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or”.

Subsec. (d). Pub.L. 106-554, § 1(a)(5) [Title I, § 112(c)(2)], revised subsec. (d). Prior to revision, subsec. (d) read as follows:

“(d) Only a person that may be a debtor under chapter 7 of this title, except a stockbroker or a commodity broker, and a railroad may be a debtor under chapter 11 of this title.”

1994 Amendments. Subsec. (b)(2). Pub.L. 103-394, § 220, added a small business investment company licensed by the Small Business Administration under subsection (c) or (d) of section 301 of the Small Business Investment Act of 1958 to the list of institutions which may not be debtors under chapter 7 of this title.

Pub.L. 103-394, § 501(d)(2), struck out “(12 U.S.C. 1813(h))” following “Federal Deposit Insurance Act”.

Subsec. (c)(2). Pub.L. 103-394, § 402, substituted “specifically authorized, in its capacity as a municipality or by name,” for “generally authorized”.

Subsec. (e). Pub.L. 103-394, § 108(a), substituted “\$250,000” for “\$100,000”, wherever appearing, and substituted “\$750,000” for “\$350,000”, wherever appearing.

1988 Amendments. Subsec. (c)(3). Pub.L. 100-597 deleted from definition of debtor an entity “unable to meet such entity’s debts as such debts mature”.

1986 Amendments. Subsec. (f). Pub.L. 99-554, § 253(1)(B), (2), added subsec. (f). Former subsec. (f) was redesignated (g).

Subsec. (g). Pub.L. 99-554, § 253(1), redesignated former subsec. (f) as (g) and, as so redesignated, added reference to family farmer.

1984 Amendments. Subsec. (a). Pub.L. 98-353, § 425(a), struck out “in the United States,” after “only a person that resides”.

Subsec. (c)(5)(D). Pub.L. 98-353, § 425(b), substituted “transfer that is avoidable under section 547 of this title” for “preference”.

Subsec. (d). Pub.L. 98-353, § 425(c), substituted “stockbroker” for “stockholder”.

Subsec. (f). Pub.L. 98-353, § 301, added subsec. (f).

1982 Amendments. Subsec. (b)(2). Pub.L. 97-320 inserted reference to industrial banks or similar institutions which are insured banks as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)).

Effective Dates

1994 Acts. Amendments by Pub.L. 103-394 effective on Oct. 22, 1994, and not to apply with respect to cases commenced under Title 11 of the United States Code before Oct. 22, 1994, see section 702 of Pub.L. 103-394.

1988 Acts. Amendment by Pub.L. 100-597 effective Nov. 3, 1988, but not applicable to any case commenced under this title before that date, see section 12 of Pub.L. 100-597.

1986 Acts. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

1984 Acts. Amendment by Pub.L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a), formerly 553(a), of Pub.L. 98-353.

Separability of Provisions. If any provision of or amendment made by Pub.L. 103-394 or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remaining provisions of and amendments made by Pub.L. 103-394 and the application of such provisions and amendments to any person or circumstance shall not be affected thereby, see section 701 of Pub.L. 103-394.

Adjustment of Dollar Amounts. For adjustment of dollar amounts specified in subsec. (e) of this section by the Judicial Conference of the United States, effective Apr. 1, 2001, see note set out under section 104 of this title.

By notice dated Feb. 20, 2001, 66 F.R. 10910, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (e) of this section, effective Apr. 1, 2001, as follows:

Adjusted \$269,250 (each time it appears) to \$290,525 (each time it appears).

Adjusted \$807,750 (each time it appears) to \$871,550 (each time it appears).

By notice dated Feb. 3, 1998, 63 F.R. 7179, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (e) of this section, effective Apr. 1, 1998, as follows:

Adjusted \$250,000 (each time it appears) to \$269,250 (each time it appears).

Adjusted \$750,000 (each time it appears) to \$807,750 (each time it appears).

Cross References

Commencement of Chapter 9 cases concerning certain unincorporated tax or special assessment districts, see section 921.

Library References:

C.J.S. Bankruptcy §§ 45–49, 362.

West's Key No. Digests, Bankruptcy ⇨2221–2236.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 110. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions

(a) In this section—

(1) “bankruptcy petition preparer” means a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing; and

(2) “document for filing” means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

(b)(1) A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer’s name and address.

(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.

(c)(1) A bankruptcy petition preparer who prepares a document for filing shall place on the document, after the preparer’s signature, an identifying number that identifies individuals who prepared the document.

(2) For purposes of this section, the identifying number of a bankruptcy petition preparer shall be the Social Security account number of each individual who prepared the document or assisted in its preparation.

(3) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.

(d)(1) A bankruptcy petition preparer shall, not later than the time at which a document for filing is presented for the debtor's signature, furnish to the debtor a copy of the document.

(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.

(e)(1) A bankruptcy petition preparer shall not execute any document on behalf of a debtor.

(2) A bankruptcy petition preparer may be fined not more than \$500 for each document executed in violation of paragraph (1).

(f)(1) A bankruptcy petition preparer shall not use the word "legal" or any similar term in any advertisements, or advertise under any category that includes the word "legal" or any similar term.

(2) A bankruptcy petition preparer shall be fined not more than \$500 for each violation of paragraph (1).

(g)(1) A bankruptcy petition preparer shall not collect or receive any payment from the debtor or on behalf of the debtor for the court fees in connection with filing the petition.

(2) A bankruptcy petition preparer shall be fined not more than \$500 for each violation of paragraph (1).

(h)(1) Within 10 days after the date of the filing of a petition, a bankruptcy petition preparer shall file a declaration under penalty of perjury disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor.

(2) The court shall disallow and order the immediate turnover to the bankruptcy trustee of any fee referred to in paragraph (1) found to be in excess of the value of services rendered for the documents prepared. An individual debtor may exempt any funds so recovered under section 522(b).

(3) The debtor, the trustee, a creditor, or the United States trustee may file a motion for an order under paragraph (2).

(4) A bankruptcy petition preparer shall be fined not more than \$500 for each failure to comply with a court order to turn over funds within 30 days of service of such order.

(i)(1) If a bankruptcy case or related proceeding is dismissed because of the failure to file bankruptcy papers, including papers specified in section 521(1) of this title, the negligence or intentional disregard of this title or the Federal Rules of Bankruptcy Procedure by a bankruptcy petition preparer, or if a bankruptcy petition preparer violates this section or commits any fraudulent, unfair, or deceptive act, the bankruptcy court shall certify that fact to the district court, and the district court, on motion of the debtor, the trustee, or a creditor and after a hearing, shall order the bankruptcy petition preparer to pay to the debtor—

(A) the debtor's actual damages;

(B) the greater of—

(i) \$2,000; or

(ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and

(C) reasonable attorneys' fees and costs in moving for damages under this subsection.

(2) If the trustee or creditor moves for damages on behalf of the debtor under this subsection, the bankruptcy petition preparer shall be ordered to pay the movant the additional amount of \$1,000 plus reasonable attorneys' fees and costs incurred.

(j)(1) A debtor for whom a bankruptcy petition preparer has prepared a document for filing, the trustee, a creditor, or the United States trustee in the district in which the bankruptcy petition preparer resides, has conducted business, or the United States trustee in any other district in which the debtor resides may bring a civil action to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of this section or from further acting as a bankruptcy petition preparer.

(2)(A) In an action under paragraph (1), if the court finds that—

(i) a bankruptcy petition preparer has—

(I) engaged in conduct in violation of this section or of any provision of this title a violation of which subjects a person to criminal penalty;

(II) misrepresented the preparer's experience or education as a bankruptcy petition preparer; or

(III) engaged in any other fraudulent, unfair, or deceptive conduct; and

(ii) injunctive relief is appropriate to prevent the recurrence of such conduct,

the court may enjoin the bankruptcy petition preparer from engaging in such conduct.

(B) If the court finds that a bankruptcy petition preparer has continually engaged in conduct described in subclause (I), (II), or (III) of clause (i) and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, or has not paid a penalty imposed under this section, the court may enjoin the person from acting as a bankruptcy petition preparer.

(3) The court shall award to a debtor, trustee, or creditor that brings a successful action under this subsection reasonable attorney's fees and costs of the action, to be paid by the bankruptcy petition preparer.

(k) Nothing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.

Added Pub.L. 103-394, Title III, § 308(a), October 22, 1994, 108 Stat. 4135.

Historical and Revision Notes

Notes of Committee on the Judiciary, new section to chapter 1 of title 11 United House Report 103-394. This section adds a

States Code to create standards and penalties pertaining to bankruptcy petition preparers. Bankruptcy petition preparers not employed or supervised by any attorney have proliferated across the country. While it is permissible for a petition preparer to provide services solely limited to typing, far too many of them also attempt to provide legal advice and legal services to debtors. These preparers often lack the necessary legal training and ethics regulation to provide such services in an adequate and appropriate manner. These services may take unfair advantage of persons who are ignorant of their rights both inside and outside the bankruptcy system. This section requires all bankruptcy preparation services to provide their relevant personal identifying information on the bankruptcy filing. It requires copies of all bankruptcy documents to be given to the debtor and signed by the debtor. The section also provides that if the petition is dismissed as the result of fraud or incompetence on the preparer's account, or if the preparer commits an inappropriate or deceptive act, the debtor is entitled to receive actual damages, plus statutory damages of \$2,000 or twice the amount paid to the preparer, whichever is greater, plus reasonable attorney's fees and costs of seeking such relief. The bankruptcy preparer is also

subject to injunctive action preventing the preparer from further work in the bankruptcy preparation business.

1994 Act. This new section requires all bankruptcy preparation services to provide their relevant personal identifying information on the bankruptcy filing. It requires copies of all bankruptcy documents to be given to the debtor and signed by the debtor. The section also provides that if the petition is dismissed as the result of fraud or incompetence on the preparer's account, or if the preparer commits an inappropriate or deceptive act, the debtor is entitled to receive actual damages, plus statutory damages of \$2,000 or twice the amount paid to the preparer, whichever is greater, plus reasonable attorney's fees and costs of seeking such relief. The bankruptcy preparer is also subject to injunctive action preventing the preparer from further work in the bankruptcy preparation business.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Library References:

West's Key No. Digests, Bankruptcy ☞2187, 3165, 3772, 3861.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

CHAPTER 3—CASE ADMINISTRATION

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SUBCHAPTER I—COMMENCEMENT OF A CASE

§ 301. Voluntary cases

A voluntary case under a chapter of this title is commenced by the filing with the bankruptcy court of a petition under such chapter by an entity that may be a debtor under such chapter. The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2558.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 301 specifies the manner in which a voluntary bankruptcy case is commenced. The debtor files a petition under this section under the particular operative chapter of the bankruptcy code under which he wishes to proceed. The filing of the petition constitutes an order for relief in the case under that chapter. The section contains no change from current law, except for the use of the phrase “order for relief” instead of “adjudication.” The term adjudication is replaced by a less pejorative phrase in light of the clear power of Congress to permit voluntary bankruptcy without the

necessity for an adjudication, as under the 1898 act, which was adopted when voluntary bankruptcy was a concept not thoroughly tested.

Legislative Statements. Sections 301, 302, 303, and 304, are all modified in the House amendment to adopt an idea contained in sections 301 and 303 of the Senate amendment requiring a petition commencing a case to be filed with the bankruptcy court. The exception contained in section 301 of the Senate bill relating to cases filed under chapter 9 is deleted. Chapter 9 cases will be handled by a bankruptcy court as are other title 11 cases.

Cross References

Applicability of this section in Chapter 9 cases, see section 901.

Automatic stay, see section 362.

Commencement of chapter 9 cases concerning certain unincorporated tax or special assessment districts, see section 921.

Petition defined, see section 101.

Property of estate, see section 541.

Library References:

C.J.S. Bankruptcy § 37.50.

West's Key No. Digests, Bankruptcy ⇨2202, 2251.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 302. Joint cases

(a) A joint case under a chapter of this title is commenced by the filing with the bankruptcy court of a single petition under such chapter by an individual that may be a debtor under such chapter and such individual's spouse. The commencement of a joint case under a chapter of this title constitutes an order for relief under such chapter.

(b) After the commencement of a joint case, the court shall determine the extent, if any, to which the debtors' estates shall be consolidated.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2558.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. A joint case is a voluntary bankruptcy case concerning a wife and husband. Under current law, there is no explicit provision for joint cases. Very often, however, in the consumer debtor context, a husband and wife are jointly liable on their debts, and jointly hold most of their property. A joint case will facilitate consolidation of their estates, to the benefit of both the debtors and their creditors, because the cost of administration will be reduced, and there will be only one filing fee.

Section 302 specifies that a joint case is commenced by the filing of a petition under an appropriate chapter by an individual and that individual's spouse. Thus, one spouse cannot

take the other into bankruptcy without the other's knowledge or consent. The filing of the petition constitutes an order for relief under the chapter selected.

Subsection (b) requires the court to determine the extent, if any, to which the estates of the two debtors will be consolidated; that is, assets and liabilities combined in a single pool to pay creditors. Factors that will be relevant in the court's determination include the extent of jointly held property and the amount of jointly-owned debts. The section, of course, is not license to consolidate in order to avoid other provisions of the title to the detriment of either the debtors or their creditors. It is designed mainly for ease of administration.

Cross References

Automatic stay, see section 362.
Petition defined, see section 101.
Property of estate, see section 541.

Library References:

C.J.S. Bankruptcy § 53.
West's Key No. Digests, Bankruptcy ⇨2311.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 303. Involuntary cases

(a) An involuntary case may be commenced only under chapter 7 or 11 of this title, and only against a person, except a farmer, family farmer, or a corporation that is not a moneyed, business, or commercial corporation, that may be a debtor under the chapter under which such case is commenced.

(b) An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title—

(1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute, or an indenture trustee representing such a holder, if such claims aggregate at least \$10,775 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;

(2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724(a) of this title, by one or more of such holders that hold in the aggregate at least \$10,775 of such claims;

(3) if such person is a partnership—

(A) by fewer than all of the general partners in such partnership; or

(B) if relief has been ordered under this title with respect to all of the general partners in such partnership, by a general partner in such partnership, the trustee of such a general partner, or a holder of a claim against such partnership; or

(4) by a foreign representative of the estate in a foreign proceeding concerning such person.

(c) After the filing of a petition under this section but before the case is dismissed or relief is ordered, a creditor holding an unsecured claim that is not contingent, other than a creditor filing under subsection (b) of this section, may join in the petition with the same effect as if such joining creditor were a petitioning creditor under subsection (b) of this section.

(d) The debtor, or a general partner in a partnership debtor that did not join in the petition, may file an answer to a petition under this section.

(e) After notice and a hearing, and for cause, the court may require the petitioners under this section to file a bond to indemnify the debtor for such amounts as the court may later allow under subsection (i) of this section.

(f) Notwithstanding section 363 of this title, except to the extent that the court orders otherwise, and until an order for relief in the case, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced.

(g) At any time after the commencement of an involuntary case under chapter 7 of this title but before an order for relief in the case, the court, on request of a party in interest, after notice to the debtor and a hearing, and if necessary to preserve the property of the estate or to prevent loss to the estate, may order the United States trustee to appoint an interim trustee under section 701 of this title to take possession of the property of the estate and to operate any business of the debtor. Before an order for relief, the debtor may regain possession of property in the possession of a trustee ordered appointed under this subsection if the debtor files such bond as the court requires, conditioned on the debtor's accounting for and delivering to the trustee, if there is an order for relief in the case, such property, or the value, as of the date the debtor regains possession, of such property.

(h) If the petition is not timely controverted, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed. Otherwise, after trial, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed, only if—

(1) the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute; or

(2) within 120 days before the date of the filing of the petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.

(i) If the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment—

(1) against the petitioners and in favor of the debtor for—

(A) costs; or

(B) a reasonable attorney's fee; or

(2) against any petitioner that filed the petition in bad faith, for—

(A) any damages proximately caused by such filing; or

(B) punitive damages.

(j) Only after notice to all creditors and a hearing may the court dismiss a petition filed under this section—

(1) on the motion of a petitioner;

(2) on consent of all petitioners and the debtor; or

(3) for want of prosecution.

(k) Notwithstanding subsection (a) of this section, an involuntary case may be commenced against a foreign bank that is not engaged in such business in the United States only under chapter 7 of this title and only if a foreign proceeding concerning such bank is pending.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2559; Pub.L. 98-353, Title III, §§ 426, 427, July 10, 1984, 98 Stat. 369; Pub.L. 99-554, Title II, §§ 204, 254, 283(b), Oct. 27, 1986, 100 Stat. 3097, 3105, 3116; Pub.L. 103-394, Title I, § 108(b), October 22, 1994, 108 Stat. 4112.

Historical and Revision Notes

1978 Acts. Section 303 governs the commencement of involuntary cases under title 11. An involuntary case may be commenced only under chapter 7, Liquidation, or chapter 11, Reorganization. Involuntary cases are not permitted for municipalities, because to do so may constitute an invasion of State sovereignty contrary to the 10th amendment, and would constitute bad policy, by permitting the fate of a municipality, governed by officials elected by the people of the municipality, to be determined by a small number of creditors of the municipality. Involuntary chapter 13 cases are not permitted either. To do so would constitute bad policy, because chapter 13 only works when there is a willing debtor that wants to repay his creditors. Short of involuntary servitude, it is difficult to keep a debtor working for his creditors when he does not want to pay them back.

The exceptions contained in current law that prohibit involuntary cases against farmers, ranchers and eleemosynary institutions are continued. Farmers and ranchers are excepted

because of the cyclical nature of their business. One drought year or one year of low prices, as a result of which a farmer is temporarily unable to pay his creditors, should not subject him to involuntary bankruptcy. Eleemosynary institutions, such as churches, schools, and charitable organizations and foundations, likewise are exempt from involuntary bankruptcy.

The provisions for involuntary chapter 11 cases is a slight change from present law, based on the proposed consolidation of the reorganization chapters. Currently, involuntary cases are permitted under chapters X and XII [chapters 10 and 12 of former Title 11] but not under chapter XI [chapter 11 of former Title 11]. The consolidation requires a single rule for all kinds of reorganization proceedings. Because the assets of an insolvent debtor belong equitably to his creditors, the bill permits involuntary cases in order that creditors may realize on their assets through reorganization as well as through liquidation.

Subsection (b) of the section specifies who may file an involuntary petition. As under cur-

rent law, if the debtor has more than 12 creditors, three creditors must join in the involuntary petition. The dollar amount limitation is changed from current law to \$5,000. The new amount applies both to liquidation and reorganization cases in order that there not be an artificial difference between the two chapters that would provide an incentive for one or the other. Subsection (b)(1) makes explicit the right of an indenture trustee to be one of the three petitioning creditors on behalf of the creditors the trustee represents under the indenture. If all of the general partners in a partnership are in bankruptcy, then the trustee of a single general partner may file an involuntary petition against the partnership. Finally, a foreign representative may file an involuntary case concerning the debtor in the foreign proceeding, in order to administer assets in this country. This subsection is not intended to overrule Bankruptcy Rule 104(d), which places certain restrictions on the transfer of claims for the purpose of commencing an involuntary case. That Rule will be continued under section 405(d) of this bill.

Subsection (c) permits creditors other than the original petitioning creditors to join in the petition with the same effect as if the joining creditor had been one of the original petitioning creditors. Thus, if the claim of one of the original petitioning creditors is disallowed, the case will not be dismissed for want of three creditors or want of \$5,000 in petitioning claims if the joining creditor suffices to fulfill the statutory requirements.

Subsection (d) permits the debtor to file an answer to an involuntary petition. The subsection also permits a general partner in a partnership debtor to answer an involuntary petition against the partnership if he did not join in the petition. Thus, a partnership petition by less than all of the general partners is treated as an involuntary, not a voluntary, petition.

The court may, under subsection (e), require the petitioners to file a bond to indemnify the debtor for such amounts as the court may later allow under subsection (i). Subsection (i) provides for costs, attorneys fees, and damages in certain circumstances. The bonding requirement will discourage frivolous petitions as well as spiteful petitions based on a desire to embarrass the debtor (who may be a competitor of a petitioning creditor) or to put the debtor out of business without good cause. An involuntary petition may put a debtor out of business even if it is without foundation and is later dismissed.

Subsection (f) is both a clarification and a change from existing law. It permits the debtor to continue to operate any business of the debtor and to dispose of property as if the case had not been commenced. The court is permitted, however, to control the debtor's powers under this subsection by appropriate orders, such as where there is a fear that the debtor may attempt to abscond with assets, dispose of them at less than their fair value, or dismantle his business, all to the detriment of the debtor's creditors.

The court may also, under subsection (g), appoint an interim trustee to take possession of the debtor's property and to operate any business of the debtor, pending trial on the involuntary petition. The court may make such an order only on the request of a party in interest, and after notice to the debtor and a hearing. There must be a showing that a trustee is necessary to preserve the property of the estate or to prevent loss to the estate. The debtor may regain possession by posting a sufficient bond.

Subsection (h) provides the standard for an order for relief on an involuntary petition. If the petition is not timely controverted (the Rules of Bankruptcy Procedure will fix time limits), the court orders relief after a trial, only if the debtor is generally unable to pay its debts as they mature, or if the debtor has failed to pay a major portion of his debts as they become due, or if a custodian was appointed during the 90-day period preceding the filing of the petition. The first two tests are variations of the equity insolvency test. They represent the most significant departure from present law concerning the grounds for involuntary bankruptcy, which requires an act of bankruptcy. Proof of the commission of an act of bankruptcy has frequently required a showing that the debtor was insolvent on a "balance-sheet" test when the act was committed. This bill abolishes the concept of acts of bankruptcy.

The equity insolvency test has been in equity jurisprudence for hundreds of years, and though it is new in the bankruptcy context (except in chapter X [former chapter 10 of former Title 11 (former section 501 et seq. of former Title 11)]), the bankruptcy courts should have no difficulty in applying it. The third test, appointment of a custodian within ninety days before the petition, is provided for simplicity. It is not a partial re-enactment of acts of bankruptcy. If a custodian of all or

substantially all of the property of the debtor has been appointed, this paragraph creates an irrebuttable presumption that the debtor is unable to pay its debts as they mature. Moreover, once a proceeding to liquidate assets has been commenced, the debtor's creditors have an absolute right to have the liquidation (or reorganization) proceed in the bankruptcy court and under the bankruptcy laws with all of the appropriate creditor and debtor protections that those laws provide. Ninety days gives creditors ample time in which to seek bankruptcy liquidation after the appointment of a custodian. If they wait beyond the ninety day period, they are not precluded from filing an involuntary petition. They are simply required to prove equity insolvency rather than the more easily provable custodian test.

Subsection (i) permits the court to award costs, reasonable attorney's fees, or damages if an involuntary petition is dismissed other than by consent of all petitioning creditors and the debtor. The damages that the court may award are those that may be caused by the taking of possession of the debtor's property under subsection (g) or section 1104 of the bankruptcy code. In addition, if a petitioning creditor filed the petition in bad faith, the court may award the debtor any damages proximately caused by the filing of the petition. These damages may include such items as loss of business during and after the pendency of the case, and so on. "Or" is not exclusive in this paragraph. The court may grant any or all of the damages provided for under the provision. Dismissal in the best interests of credits under section 305(a)(1) would not give rise to a damages claim.

Under subsection (j), the court may dismiss the petition by consent only after giving notice to all creditors. The purpose of the subsection is to prevent collusive settlements among the debtor and the petitioning creditors while other creditors, that wish to see relief ordered with respect to the debtor but that did not participate in the case, are left without sufficient protection.

Subsection (k) governs involuntary cases against foreign banks that are not engaged in business in the United States but that have assets located here. The subsection prevents a foreign bank from being placed into bankruptcy in this country unless a foreign proceeding against the bank is pending. The special protection afforded by this section is needed to prevent creditors from effectively closing down a foreign bank by the commencement of an

involuntary bankruptcy case in this country unless that bank is involved in a proceeding under foreign law. An involuntary case commenced under this subsection gives the foreign representative and alternative to commencing a case ancillary to a foreign proceeding under section 304. Senate Report No. 95-989.

1984 Acts. Statements by Legislative Leaders, see 1984 U.S. Code Cong. and Adm. News, p. 576.

1986 Acts. House Report No. 99-764 and House Conference Report No. 99-958, see 1986 U.S. Code Cong. and Adm. News, p. 5227.

1994 Acts. House Report No. 103-835, see 1994 U.S. Code Cong. and Adm. News, p. 3340.

Legislative Statements. Section 303(b)(1) is modified to make clear that unsecured claims against the debtor must be determined by taking into account liens securing property held by third parties.

Section 303(b)(3) adopts a provision contained in the Senate amendment indicating that an involuntary petition may be commenced against a partnership by fewer than all of the general partners in such partnership. Such action may be taken by fewer than all of the general partners notwithstanding a contrary agreement between the partners or State or local law.

Section 303(h)(1) in the House amendment is a compromise of standards found in H.R. 8200 as passed by the House and the Senate amendment pertaining to the standards that must be met in order to obtain an order for relief in an involuntary case under title 11. The language specifies that the court will order such relief only if the debtor is generally not paying debtor's debts as they become due.

Section 303(h)(2) reflects a compromise pertaining to section 543 of title 11 relating to turnover of property by a custodian. It provides an alternative test to support an order for relief in an involuntary case. If a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession within 120 days before the date of the filing of the petition, then the court may order relief in the involuntary case. The test under section 303(h)(2) differs from section 3a(5) of the Bankruptcy Act [section 21(a)(5) of former Title 11], which requires an involuntary case to be commenced before the earlier of

time such custodian was appointed or took possession. The test in section 303(h)(2) authorizes an order for relief to be entered in an involuntary case from the later date on which the custodian was appointed or took possession.

Amendments

1994 Amendments. Subsec. (b)(1). Pub.L. 103-394, § 108(b)(1), substituted "if such claims aggregate at least \$10,000 more than the value of any lien" for "if such claims aggregate at least \$5,000 more than the value of any lien".

Subsec. (b)(2). Pub.L. 103-394, § 108(b)(2), substituted "hold in the aggregate at least \$10,000 of such claims" for "hold in the aggregate at least \$5,000 of such claims".

1986 Amendments. Subsec. (a). Pub.L. 99-554, § 254, added reference to family farmer.

Subsec. (b). Pub.L. 99-554, § 283(b)(1), substituted "subject of" for "subject on".

Subsec. (g). Pub.L. 99-554, § 204(1), substituted "may order the United States trustee to appoint" for "may appoint".

Subsec. (h)(1). Pub.L. 99-554, § 283(b)(2), substituted "are the" for "that are the".

Subsec. (i)(1)(A). Pub.L. 99-554, § 204(2), substituted "costs; or" for "costs;".

Subsec. (i)(1)(C). Pub.L. 99-554, § 204(2), struck out "(C) any damages proximately caused by the taking of possession of the debtor's property by a trustee appointed under subsection (g) of this section or section 1104 of this title; or".

1984 Amendments. Subsec. (b). Pub.L. 98-353, § 426(a), added "against a person" after "involuntary case".

Subsec. (b)(1). Pub.L. 98-353, § 426(b)(1), added "or the subject of a bona fide dispute," after "liability".

Subsec. (h)(1). Pub.L. 98-353, § 426(b)(2), added "unless such debts that are the subject of a bona fide dispute" after "due".

Subsec. (j)(2). Pub.L. 98-353, § 427, substituted "debtor" for "debtors".

Effective Dates

1994 Acts. Amendment by Pub.L. 103-394 effective on Oct. 22, 1994, and not to apply with respect to cases commenced under Title 11 of the United States Code before Oct. 22, 1994, see section 702 of Pub.L. 103-394.

1986 Acts. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 204, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 204, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such districts before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 204, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election de-

scribed in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), and (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 204, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1),

(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 254, effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 283, effective 30 days after Oct. 27, 1986, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

1984 Acts. Amendment by sections 426(a) and 427 of Pub.L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, and amendment by section 426(b) of Pub.L. 98-353 effective July 10, 1984, see section 552(a), (b) of Pub.L. 98-353.

Separability of Provisions. If any provision of or amendment made by Pub.L. 103-394 or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remaining provisions of and amendments made by Pub.L. 103-394 and the application of such provisions and amendments to any person or circumstance shall not be affected thereby, see section 701 of Pub.L. 103-394.

Cross References

Allowance of administrative expenses incurred by creditor filing petition, see section 503.
Automatic stay, see section 362 of this title.
Petition defined, see section 101.
Postpetition transactions, see section 549.
Property of estate, see section 541.
Sharing of compensation between attorneys, see section 504.

Library References:

C.J.S. Bankruptcy §§ 45 et seq.
West's Key No. Digests, Bankruptcy ⇨2223, 2229, 2233(1-3), 2281-2297.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 304. Cases ancillary to foreign proceedings

(a) A case ancillary to a foreign proceeding is commenced by the filing with the bankruptcy court of a petition under this section by a foreign representative.

(b) Subject to the provisions of subsection (c) of this section, if a party in interest does not timely controvert the petition, or after trial, the court may—

(1) enjoin the commencement or continuation of—

(A) any action against—

(i) a debtor with respect to property involved in such foreign proceeding; or

(ii) such property; or

(B) the enforcement of any judgment against the debtor with respect to such property, or any act or the commencement or continuation of any judicial proceeding to create or enforce a lien against the property of such estate;

(2) order turnover of the property of such estate, or the proceeds of such property, to such foreign representative; or

(3) order other appropriate relief.

(c) In determining whether to grant relief under subsection (b) of this section, the court shall be guided by what will best assure an economical and expeditious administration of such estate, consistent with—

(1) just treatment of all holders of claims against or interests in such estate;

(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

(3) prevention of preferential or fraudulent dispositions of property of such estate;

(4) distribution of proceeds of such estate substantially in accordance with the order prescribed by this title;

(5) comity; and

(6) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2560.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section governs cases filed in the bankruptcy courts that are ancillary to foreign proceedings. That is, where a foreign bankruptcy case is pending concerning a particular debtor and that debtor has assets in this country, the foreign representative may file a petition under this section, which does not commence a full bankruptcy case, in order to administer assets located in this country, to prevent dismemberment by local creditors of assets located here, or for other appropriate relief. The debtor is given the opportunity to controvert the petition.

Subsection (c) requires the court to consider several factors in determining what relief, if any, to grant. The court is to be guided by what will best assure an economical and expeditious administration of the estate, consistent with just treatment of all creditors and equity security holders; protection of local creditors

and equity security holders against prejudice and inconvenience in processing claims and interests in the foreign proceeding; prevention of preferential or fraudulent disposition of property of the estate; distribution of the proceeds of the estate substantially in conformity with the distribution provisions of the bankruptcy code; and, if the debtor is an individual, the provision of an opportunity for a fresh start. These guidelines are designed to give the court the maximum flexibility in handling ancillary cases. Principles of international comity and respect for the judgments and laws of other nations suggest that the court be permitted to make the appropriate orders under all of the circumstances of each case, rather than being provided with inflexible rules.

Legislative Statements. Section 304(b) adopts a provision contained in the Senate amendment with modifications. The provision

indicates that if a party in interest does not timely controvert the petition in a case ancillary to a foreign proceeding, or after trial on the merits, the court may take various actions, including enjoining the commencement or continuation of any action against the debtor with respect to property involved in the proceeding, or against the property itself; enjoining the enforcement of any judgment against the debt-

or or the debtor's property; or the commencement or continuation of any judicial proceeding to create or enforce a lien against the property of the debtor or the estate.

Section 304(c) is modified to indicate that the court shall be guided by considerations of comity in addition to the other factors specified therein.

Cross References

Petition defined, see section 101.

Library References:

C.J.S. Bankruptcy § 39.

West's Key No. Digests, Bankruptcy ⇨2341.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 305. Abstention

(a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—

(1) the interests of creditors and the debtor would be better served by such dismissal or suspension; or

(2)(A) there is pending a foreign proceeding; and

(B) the factors specified in section 304(c) of this title warrant such dismissal or suspension.

(b) A foreign representative may seek dismissal or suspension under subsection (a)(2) of this section.

(c) An order under subsection (a) of this section dismissing a case or suspending all proceedings in a case, or a decision not so to dismiss or suspend, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of title 28 or by the Supreme Court of the United States under section 1254 of title 28.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2561; Pub.L. 101-650, Title III, § 309(a), Dec. 1, 1990, 104 Stat. 5113; Pub.L. 102-198, § 5, Dec. 9, 1991, 105 Stat. 1623.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. A principle of the common law requires a court with jurisdiction over a particular matter to take jurisdiction. This section recognizes that there are cases in which it would be appropriate for the court to decline jurisdiction. Abstention under this section, however, is of jurisdiction over the entire case. Abstention from jurisdiction over a particular proceeding in a case is governed by proposed 28 U.S.C. 1471(c). Thus, the court is

permitted, if the interests of creditors and the debtor would be better served by dismissal of the case or suspension of all proceedings in the case, to so order. The court may dismiss or suspend under the first paragraph, for example, if an arrangement is being worked out by creditors and the debtor out of court, there is no prejudice to the results of creditors in that arrangement, and an involuntary case has been commenced by a few recalcitrant creditors to provide a basis for future threats to

extract full payment. The less expensive out-of-court work-out may better serve the interests in the case. Likewise, if there is pending a foreign proceeding concerning the debtor and the factors specified in proposed 11 U.S.C. 304(c) warrant dismissal or suspension, the court may so act.

Subsection (b) gives a foreign representative authority to appear in the bankruptcy court to request dismissal or suspension. Subsection (c) makes the dismissal or suspension order nonreviewable by appeal or otherwise. The bankruptcy court, based on its experience and discretion is vested with the power of decision.

Library References:

C.J.S. Bankruptcy § 16; Federal Courts § 10:1 et seq.
West's Key No. Digests, Federal Courts ☞47.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 306. Limited appearance

An appearance in a bankruptcy court by a foreign representative in connection with a petition or request under section 303, 304, or 305 of this title does not submit such foreign representative to the jurisdiction of any court in the United States for any other purpose, but the bankruptcy court may condition any order under section 303, 304, or 305 of this title on compliance by such foreign representative with the orders of such bankruptcy court.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2561.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 306 permits a foreign representative that is seeking dismissal or suspension under section 305 of an ancillary case or that is appearing in connection with a petition under section 303 or 304 to appear without subjecting himself to the jurisdiction of any other court in the United States, including State courts. The protection is necessary to allow the foreign representative to present his case and the case of the foreign estate, without waiving the normal jurisdictional rules of the foreign country. That is, creditors in this country will still have to seek redress against the foreign estate according to the host country's jurisdictional rules. Any other result would permit local creditors to obtain unfair advantage by filing an involuntary case, thus requiring the foreign represen-

tative to appear, and then obtaining local jurisdiction over the representative in connection with his appearance in this country. That kind of bankruptcy law would legalize an ambush technique that has frequently been rejected by the common law in other contexts.

However, the bankruptcy court is permitted under section 306 to condition any relief under section 303, 304, or 305 on the compliance by the foreign representative with the orders of the bankruptcy court. The last provision is not carte blanche to the bankruptcy court to require the foreign representative to submit to jurisdiction in other courts contrary to the general policy of the section. It is designed to enable the bankruptcy court to enforce its own orders that are necessary to the appropriate relief granted under section 303, 304, or 305.

Library References:

C.J.S. Appearances §§ 4 et seq.
West's Key No. Digests, Appearance ☞9(1-8).

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 307. United States trustee

The United States trustee may raise and may appear and be heard on any issue in any case or proceeding under this title but may not file a plan pursuant to section 1121(c) of this title.

Added Pub.L. 99-554, Title II, § 205(a), Oct. 27, 1986, 100 Stat. 3098.

Historical and Revision Notes

Effective Date; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Enactment by Pub.L. 99-554, effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Enactment by Pub.L. 99-554, § 205(a), not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Enactment by Pub.L. 99-554, § 205(a), not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see sec-

tion 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Enactment by Pub.L. 99-554, § 205(a), not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before an election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I), of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Standing. Pub.L. 101-650, Title III, § 317(b), Dec. 1, 1990, 104 Stat. 5115, provided that: "A bankruptcy administrator may raise and may appear and be heard on any issue in any case under title 11, United States Code [this title], but may not file a plan pursuant to section 1121(c) of such title [section 1121(c) of this title]."

Cross References

See 28 U.S.C.A. § 581 et seq., *infra*.

Library References:

C.J.S. Bankruptcy § 38.

West's Key No. Digests, Bankruptcy ⇨2205.

SUBCHAPTER II—OFFICERS**§ 321. Eligibility to serve as trustee**

(a) A person may serve as trustee in a case under this title only if such person is—

(1) an individual that is competent to perform the duties of trustee and, in a case under chapter 7, 12, or 13 of this title, resides or has an office in the judicial district within which the case is pending, or in any judicial district adjacent to such district; or

(2) a corporation authorized by such corporation's charter or bylaws to act as trustee, and, in a case under chapter 7, 12, or 13 of this title, having an office in at least one of such districts.

(b) A person that has served as an examiner in the case may not serve as trustee in the case.

(c) The United States trustee for the judicial district in which the case is pending is eligible to serve as trustee in the case if necessary.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2561; Pub.L. 98-353, Title III, § 428, July 10, 1984, 98 Stat. 369; Pub.L. 99-554, Title II, §§ 206, 257(c), Oct. 27, 1986, 100 Stat. 3098, 3114.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 321 is adapted from current Bankruptcy Act § 45 [former section 73 of this title] and Bankruptcy Rule 209. Subsection (a) specifies that an individual may serve as trustee in a bankruptcy case only if he is competent to perform the duties of trustee and resides or has an office in the judicial district within which the case is pending, or in an adjacent judicial district. A corporation must be authorized by its charter or bylaws to act as trustee, and, for chapter 7 or 13 cases, must have an office in any of the above mentioned judicial districts.

Legislative Statements. Section 321 indicates that an examiner may not serve as a trustee in the case.

1986 Amendment. Subsec. (c). Pub.L. 99-554, § 206, added subsec. (c).

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Savings Provisions; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(c), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 206, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 206, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 206, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district

becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 206, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy § 195.

West's Key No. Digests, Bankruptcy ⇨3003.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 322. Qualification of trustee

(a) Except as provided in subsection (b)(1), a person selected under section 701, 702, 703, 1104, 1163, 1202, or 1302 of this title to serve as trustee in a case under this title qualifies if before five days after such selection, and before beginning official duties, such person has filed with the court a bond in favor of the United States conditioned on the faithful performance of such official duties.

(b)(1) The United States trustee qualifies wherever such trustee serves as trustee in a case under this title.

(2) The United States trustee shall determine—

(A) the amount of a bond required to be filed under subsection (a) of this section; and

(B) the sufficiency of the surety on such bond.

(c) A trustee is not liable personally or on such trustee's bond in favor of the United States for any penalty or forfeiture incurred by the debtor.

(d) A proceeding on a trustee's bond may not be commenced after two years after the date on which such trustee was discharged.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2562; Pub.L. 98-353, Title III, § 429, July 10, 1984, 98 Stat. 369; Pub.L. 99-554, Title II, §§ 207, 257(d), Oct. 27, 1986, 100 Stat. 3098, 3114; Pub.L. 103-394, Title V, § 501(d)(3), October 22, 1994, 108 Stat. 4143.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. A trustee qualifies in a case by filing, within five days after selection, a bond in favor of the United States, conditioned on the faithful performance of his official duties. This section is derived from the Bankruptcy Act section 50b [former section 78(b) of this title]. The court is required to determine the amount of the bond and the sufficiency of the surety on the bond. Subsection (c), derived from Bankruptcy Act section 50i [former section 78(i) of this title], relieves the trustee from personal liability and from liability on his bond for any penalty or forfeiture incurred by the debtor. Subsection (d), derived from section 50m [former section 78(m) of this title], fixes a two-year statute of limitations on any action on a trustee's bond. Finally, subsection (e) dispenses with the bonding requirement for the United States trustee.

Legislative Statements. Section 322(a) is modified to include a trustee serving in a railroad reorganization under subchapter IV of chapter 11.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b),

this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

1986 Amendment. Subsec. (a). Pub.L. 99-554, § 207(1), substituted "Except as provided in subsection (b)(1), a person" for "A person".

Subsec. (b). Pub.L. 99-554, § 207(2), added par. (1), designated existing provisions as par. (2), and, as so designated, substituted "The United States trustee" for "The court", "(A) the amount" for "(1) the amount", and "(B) the sufficiency" for "(2) the sufficiency".

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Savings Provisions; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amend-

ments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 257(d) not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 207 not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 207, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 207, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect

to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 207, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Appointment of trustee or examiner upon failure to qualify, see section 1104.
Certain customer transactions affected before qualification of trustee, see section 746.
Debtor in possession defined as debtor except when qualified person is serving as trustee under this section, see section 1101.
Duties of U.S. Trustees, see 28 U.S.C.A. § 586, *infra*.
Interim trustee, see section 701.
Successor trustee, see section 703.
Qualification for membership on panels of private trustees, see 28 CFR § 58.3, *infra*.
Qualification for appointment as standing trustee, see 28 CFR § 58.4, *infra*.
Trustee in chapter 13 cases, see section 1302.

Library References:

C.J.S. Bankruptcy § 195.
West's Key No. Digests, Bankruptcy ⇨3006.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 323. Role and capacity of trustee

- (a) The trustee in a case under this title is the representative of the estate.
- (b) The trustee in a case under this title has capacity to sue and be sued.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2562.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) of this section makes the trustee the representative of the estate. Subsection (b) grants the trustee the capacity to sue and to be sued. If the debtor remains in possession in a chapter

11 case, section 1107 gives the debtor in possession these rights of the trustee: the debtor in possession becomes the representative of the estate, and may sue and be sued. The same applies in a chapter 13 case.

Library References:

C.J.S. Bankruptcy § 197.
West's Key No. Digests, Bankruptcy ⇨3008.1, 3009.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 324. Removal of trustee or examiner

(a) The court, after notice and a hearing, may remove a trustee, other than the United States trustee, or an examiner, for cause.

(b) Whenever the court removes a trustee or examiner under subsection (a) in a case under this title, such trustee or examiner shall thereby be removed in all other cases under this title in which such trustee or examiner is then serving unless the court orders otherwise.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2562; Pub.L. 99-554, Title II, § 208, Oct. 27, 1986, 100 Stat. 3098.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section permits the court, after notice and a hearing, to remove a trustee for cause.

1986 Amendment. Pub.L. 99-554, § 208, designated existing provisions as subsec. (a), and, as so designated, substituted “a trustee, other than the United States trustee, or an examiner” for “a trustee or an examiner”, and added subsec. (b).

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 208 not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 208, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L.

99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 208, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 208, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney

General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1),

(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Cross References

Appointment of trustee or examiner upon removal, see section 1104.

Procedures for suspension and removal of panel trustees and standing trustees, see 28 CFR, § 58.6, *infra*.

Successor trustee, see section 703.

Library References:

C.J.S. Bankruptcy § 196.

West's Key No. Digests, Bankruptcy Ⓒ3007.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 325. Effect of vacancy

A vacancy in the office of trustee during a case does not abate any pending action or proceeding, and the successor trustee shall be substituted as a party in such action or proceeding.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2562.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 325, derived from Bankruptcy Act section 46 [former section 74 of this title] and Bankruptcy Rule 221(b), specifies that a vacancy in the

office of trustee during a case does not abate any pending action or proceeding. The successor trustee, when selected and qualified, is substituted as a party in any pending action or proceeding.

Library References:

C.J.S. Bankruptcy § 196.

West's Key No. Digests, Bankruptcy Ⓒ3007.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 326. Limitation on compensation of trustee

(a) In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

(b) In a case under chapter 12 or 13 of this title, the court may not allow compensation for services or reimbursement of expenses of the United States

trustee or of a standing trustee appointed under section 586(b) of title 28, but may allow reasonable compensation under section 330 of this title of a trustee appointed under section 1202(a) or 1302(a) of this title for the trustee's services, payable after the trustee renders such services, not to exceed five percent upon all payments under the plan.

(c) If more than one person serves as trustee in the case, the aggregate compensation of such persons for such service may not exceed the maximum compensation prescribed for a single trustee by subsection (a) or (b) of this section, as the case may be.

(d) The court may deny allowance of compensation for services or reimbursement of expenses of the trustee if the trustee failed to make diligent inquiry into facts that would permit denial of allowance under section 328(c) of this title or, with knowledge of such facts, employed a professional person under section 327 of this title.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2562; Pub.L. 98-353, Title III, § 430(a), (b), July 10, 1984, 98 Stat. 369; Pub.L. 99-554, Title II, § 209, Oct. 27, 1986, 100 Stat. 3098; Pub.L. 103-394, Title I, § 107, October 22, 1994, 108 Stat. 4111.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section is derived in part from section 48c of the Bankruptcy Act [former section 76(c) of this title]. It must be emphasized that this section does not authorize compensation of trustees. This section simply fixes the maximum compensation of a trustee. Proposed 11 U.S.C. 330 authorizes and fixes the standard of compensation. Under section 48c of current law [former section 76(c) of this title], the maximum limits have tended to become minimums in many cases. This section is not intended to be so interpreted. The limits in this section, together with the limitations found in section 330, are to be applied as outer limits, and not as grants or entitlements to the maximum fees specified.

The maximum fee schedule is derived from section 48c(1) of the present act [former section 76(c)(1) of this title], but with a change relating to the bases on which the percentage maxima are computed. The maximum fee schedule is based on decreasing percentages of increasing amounts. The amounts are the amounts of money distributed by the trustee to parties in interest, excluding the debtor, but including secured creditors. These amounts were last amended in 1952. Since then, the cost of living has approximately doubled. Thus, the bases were doubled.

It should be noted that the bases on which the maximum fee is computed includes moneys

turned over to secured creditors, to cover the situation where the trustee liquidates property subject to a lien and distributes the proceeds. It does not cover cases in which the trustee simply turns over the property to the secured creditor, nor where the trustee abandons the property and the secured creditor is permitted to foreclose. The provision is also subject to the rights of the secured creditor generally under proposed section 506, especially 506(c). The \$150 discretionary fee provision of current law is retained.

Subsection (b) of this section entitles an operating trustee to a reasonable fee, without any limitation based on the maximum provided for a liquidating trustee as in current law, Bankruptcy Act § 48c(2) [former section 76(c)(2) of this title].

Subsection (c) [now (b)] permits a maximum fee of five percent on all payments to creditors under a chapter 13 plan to the trustee appointed in the case.

Subsection (d) [now (c)] provides a limitation not found in current law. Even if more than one trustee serves in the case, the maximum fee payable to all trustees does not change. For example, if an interim trustee is appointed and an elected trustee replaces him, the combined total of the fees payable to the interim trustee and the permanent trustee may not exceed the amount specified in this section. Under current law, very often a receiver receives a full fee and a subsequent trustee also

receives a full fee. The resultant "double-dipping", especially in cases in which the receiver and the trustee are the same individual, is detrimental to the interests of creditors, by needlessly increasing the cost of administering bankruptcy estates.

Subsection (e) [now (d)] permits the court to deny compensation to a trustee if the trustee has been derelict in his duty by employing counsel, who is not disinterested.

Legislative Statements. Section 326(a) of the House amendment modifies a provision as contained in H.R. 8200 as passed by the House. The percentage limitation on the fees of a trustee contained in the House bill is retained, but no additional percentage is specified for cases in which a trustee operates the business of the debtor. Section 326(b) of the Senate amendment, is deleted as an unnecessary restatement of the limitation contained in section 326(a) as modified. The provision contained in section 326(a) of the Senate amendment authorizing a trustee to receive a maximum fee of \$150 regardless of the availability of assets in the estate is deleted. It will not be necessary in view of the increase in section 326(a) and the doubling of the minimum fee as provided in section 330(b).

Section 326(b) of the House amendment derives from section 326(c) of H.R. 8200 as passed by the House. It is a conforming amendment to indicate a change with respect to the selection of a trustee in a chapter 13 case under section 1302(a) of title 11.

1994 Act. The amendment to subsection (a) increases the court-approved compensation payable to private trustees. Under prior law, the private bankruptcy trustees could receive 15 percent of the first \$1,000 disbursed in the case; 6 percent of the next \$2,000 disbursed; and 3 percent of any additional monies disbursed. The amended version increases the maximum compensation to 25 percent of the first \$5,000 in disbursements to creditors; 10 percent of additional amounts up to \$50,000; 5 percent of additional amounts up to \$1 million; and 3 percent of any amounts in excess of \$1 million. This increased compensation is not borne by the Federal Treasury, but is to be paid by those involved in the bankruptcy system.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b),

this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

1986 Amendment. Subsec. (b). Pub.L. 99-554, § 209, substituted "under chapter 12 or 13 of this title" for "under chapter 13 of this title", "expenses of the United States trustee or of a standing trustee appointed under section 586(b) of title 28" for "expenses of a standing trustee appointed under section 1302(d) of this title", and "under section 1202(a) or 1302(a) of this title" for "under section 1302(a) of this title".

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; References in Title 11 Section 326(b) to Title 11 Chapter 13 and Section 1302(a) and (d); Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Until amendments made by section 209 of Pub.L. 99-554 become effective in a district and apply to a case, for purposes of such case any references in subsec. (b) of this section to chapter 13 of this title, to section 1302(d) of this title, or to section 1302(a) of this title deemed references to other provisions of the Code, see section 302(c)(3)(A)(i) to (iii) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 209, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of

section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 209, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 209, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the

election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 209, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy § 232.
West's Key No. Digests, Bankruptcy ⇨3152.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 327. Employment of professional persons

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

(b) If the trustee is authorized to operate the business of the debtor under section 721, 1202 or 1108 of this title, and if the debtor has regularly employed attorneys, accountants, or other professional persons on salary, the trustee may retain or replace such professional persons if necessary in the operation of such business.

(c) In a case under chapter 7, 12 or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.

(d) The court may authorize the trustee to act as attorney or accountant for the estate if such authorization is in the best interest of the estate.

(e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

(f) The trustee may not employ a person that has served as an examiner in the case.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2563; Pub.L. 98-353, Title III, § 430(c), July 10, 1984, 98 Stat. 370; Pub.L. 99-554, Title II, §§ 210, 257(e), Oct. 27, 1986, 100 Stat. 3099, 3114.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section authorizes the trustee, subject to the court's approval, to employ professional persons, such as attorneys, accountants, appraisers, and auctioneers, to represent or perform services for the estate. The trustee may employ only disinterested persons that do not hold or represent an interest adverse to the estate.

Subsection (b) is an exception, and authorizes the trustee to retain or replace professional persons that the debtor has employed if necessary in the operation of the debtor's business.

Subsection (c) provides that a professional person is not disqualified for employment solely because of the person's prior employment by or representation of a secured or unsecured creditor.

Subsection (d) permits the court to authorize the trustee, if qualified to act as his own counsel or accountant.

Subsection (e) permits the trustee, subject to the court's approval, to employ for a specified special purpose an attorney that has represented the debtor, if such employment is in the

best interest of the estate and if the attorney does not hold or represent an interest adverse to the debtor of the estate with respect to the matter on which he is to be employed. This subsection does not authorize the employment of the debtor's attorney to represent the estate generally or to represent the trustee in the conduct of the bankruptcy case. The subsection will most likely be used when the debtor is involved in complex litigation, and changing attorneys in the middle of the case after the bankruptcy case has commenced would be detrimental to the progress of that other litigation.

Legislative Statements. Section 327(a) of the House amendment contains a technical amendment indicating that attorneys, and perhaps other officers enumerated therein, represent, rather than assist, the trustee in carrying out the trustee's duties.

Section 327(c) represents a compromise between H.R. 8200 as passed by the House and the Senate amendment. The provision states that former representation of a creditor, whether secured or unsecured, will not automatically disqualify a person from being em-

ployed by a trustee, but if such person is employed by the trustee, the person may no longer represent the creditor in connection with the case.

Section 327(f) prevents an examiner from being employed by the trustee.

Codification. Amendment by Pub.L. 99-554 § 257(e)(2), has been executed to text following “chapter 7” as the probable intent of Congress, notwithstanding directory language which required amendment to be executed following “section 7”.

1986 Amendment. Subsec. (c). Pub.L. 99-554, § 210, substituted “another creditor or the United States trustee, in which case” for “another creditor, in which case”.

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Savings Provisions; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(e), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 210, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by sec-

tion 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 210, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 210, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 210, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11

commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1),

(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Qualification for employment by debtor in possession despite prior employment or representation, see section 1107.

Library References:

C.J.S. Bankruptcy §§ 231, 234, 238.

West's Key No. Digests, Bankruptcy Ⓒ3029.1, 3030.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 328. Limitation on compensation of professional persons

(a) The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

(b) If the court has authorized a trustee to serve as an attorney or accountant for the estate under section 327(d) of this title, the court may allow compensation for the trustee's services as such attorney or accountant only to the extent that the trustee performed services as attorney or accountant for the estate and not for performance of any of the trustee's duties that are generally performed by a trustee without the assistance of an attorney or accountant for the estate.

(c) Except as provided in section 327(c), 327(e), or 1107(b) of this title, the court may deny allowance of compensation for services and reimbursement of expenses of a professional person employed under section 327 or 1103 of this title if, at any time during such professional person's employment under section 327 or 1103 of this title, such professional person is not a disinterested person, or represents or holds an interest adverse to the interest of the estate with respect to the matter on which such professional person is employed.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2563; Pub.L. 98-353, Title III, § 431, July 10, 1984, 98 Stat. 370.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section, which is parallel to section 326, fixes the maximum compensation allowable to a professional person employed under section 327. It authorizes the trustee, with the court's approval, to employ professional persons on any reasonable terms, including on a retainer, on an hourly or on a contingent fee basis. Subsection (a) further permits the court to allow compensation different from the compensation provided under the trustee's agreement if the prior agreement proves to have been improvident in light of development unanticipatable at the time of the agreement. The court's power includes the power to increase as well as decrease the agreed upon compensation. This provision is permissive, not mandatory, and should not be used by the court if to do so would violate the code of ethics of the professional involved.

Subsection (b) limits a trustee that has been authorized to serve as his own counsel to only one fee for each service. The purpose of permitting the trustee to serve as his own counsel is to reduce costs. It is not included to provide the trustee with a bonus by permitting him to receive two fees for the same service or to avoid the maxima fixed in section 326. Thus, this subsection requires the court to differentiate between the trustee's services as trustee, and his services as trustee's counsel, and to fix compensation accordingly. Services that a trustee normally performs for an estate with-

out assistance of counsel are to be compensated under the limits fixed in section 326. Only services that he performs that are normally performed by trustee's counsel may be compensated under the maxima imposed by this section.

Subsection (c) permits the court to deny compensation for services and reimbursement of expenses if the professional person is not disinterested or if he represents or holds an interest adverse to the estate on the matter on which he is employed. The subsection provides a penalty for conflicts of interest.

Legislative Statements. Section 328(c) adopts a technical amendment contained in the Senate amendment indicating that an attorney for the debtor in possession is not disqualified for compensation for services and reimbursement of expenses simply because of prior representation of the debtor.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy §§ 231 et seq.

West's Key No. Digests, Bankruptcy ⅈ3029.1, 3030, 3155-3205.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 329. Debtor's transactions with attorneys

(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

(b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—

(1) the estate, if the property transferred—

(A) would have been property of the estate; or

(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12 or 13 of this title; or

(2) the entity that made such payment.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2564; Pub.L. 98-353, Title III, § 432, July 10, 1984, 98 Stat. 370; Pub.L. 99-554, Title II, § 257(c), Oct. 27, 1986, 100 Stat. 3114.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section, derived in large part from current Bankruptcy Act section 60d [former section 96(d) of this title], requires the debtor's attorney to file with the court a statement of the compensation paid or agreed to be paid to the attorney for services in contemplation of and in connection with the case, and the source of the compensation. Payments to a debtor's attorney provide serious potential for evasion of creditor protection provisions of the bankruptcy laws, and serious potential for overreaching by the debtor's attorney, and should be subject to careful scrutiny.

Subsection (b) permits the court to deny compensation to the attorney, to cancel an agreement to pay compensation, or to order the return of compensation paid, if the compensation exceeds the reasonable value of the services provided. The return of payments already made are generally to the trustee for the benefit of the estate. However, if the property would not have come into the estate in any event, the court will order it returned to the entity that made the payment.

The Bankruptcy Commission recommended a provision similar to this that would have also permitted an examination of the debtor's transactions with insiders. S. 236, 94th Cong.,

1st sess., sec. 4-311(b) (1975). Its exclusion here is to permit it to be dealt with by the Rules of Bankruptcy Procedure. It is not intended that the provision be deleted entirely, only that the flexibility of the rules is more appropriate for such evidentiary matters.

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(c), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy §§ 231 et seq.

West's Key No. Digests, Bankruptcy ⇨3030, 3170-3205.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 330. Compensation of officers

(a)(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103—

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

(3)(A) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and

(E) whether the compensation is reasonable, based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for—

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate; or

(II) necessary to the administration of the case.

(B) In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

(5) The court shall reduce the amount of compensation awarded under this section by the amount of any interim compensation awarded under section 331, and, if the amount of such interim compensation exceeds the amount of compensation awarded under this section, may order the return of the excess to the estate.

(6) Any compensation awarded for the preparation of a fee application shall be based on the level and skill reasonably required to prepare the application.

(b)(1) There shall be paid from the filing fee in a case under chapter 7 of this title \$45 to the trustee serving in such case, after such trustee's services are rendered.

(2) The Judicial Conference of the United States—

(A) shall prescribe additional fees of the same kind as prescribed under section 1914(b) of title 28; and

(B) may prescribe notice of appearance fees and fees charged against distributions in cases under this title;

to pay \$15 to trustees serving in cases after such trustees' services are rendered. Beginning 1 year after the date of the enactment of the Bankruptcy Reform Act of 1994, such \$15 shall be paid in addition to the amount paid under paragraph (1).

(c) Unless the court orders otherwise, in a case under chapter 12 or 13 of this title the compensation paid to the trustee serving in the case shall not be less than \$5 per month from any distribution under the plan during the administration of the plan.

(d) In a case in which the United States trustee serves as trustee, the compensation of the trustee under this section shall be paid to the clerk of the bankruptcy court and deposited by the clerk into the United States Trustee System Fund established by section 589a of title 28.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2564; Pub.L. 98-353, Title III, §§ 433, 434, July 10, 1984, 98 Stat. 370; Pub.L. 99-554, Title II, §§ 211, 257(f), Oct. 27, 1986, 100 Stat. 3099, 3114; Pub.L. 103-394, Title I, § 117, Title II, § 224(b), October 22, 1994, 108 Stat. 4119, 4130.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 330 authorizes the court to award compensation for services and reimbursement of expenses of officers of the estate, and other professionals. The compensation is to be reasonable, for economy in administration is the basic objective. Compensation is to be for actual necessary services, based on the time spent, the nature, the extent and the value of the services rendered, and the cost of comparable services in nonbankruptcy cases. These are the criteria that have been applied by the courts as analytic aids in defining "reasonable" compensation.

The reference to "the cost of comparable services" in a nonbankruptcy case is not intended as a change of existing law. In a bankruptcy case fees are not a matter for private agreement. There is inherent a "public interest" that "must be considered in awarding fees," *Massachusetts Mutual Life Insurance Co. v. Brock*, 405 F.2d 429, 432 (C.A.5, 1968), cert. denied, 395 U.S. 906 [89 S.Ct. 1748, 23 L.Ed.2d 220]. An allowance is the result of a balance struck between moderation in the interest of the estate and its security holders and the need to be "generous enough to encourage" lawyers and others to render the necessary and exacting services that bankruptcy cases often require. In *re Yale Express System, Inc.*, 366 F.Supp. 1376, 1381 (S.D.N.Y.

1973). The rates for similar kinds of services in private employment is one element, among others, in that balance. Compensation in private employment noted in subsection (a) is a point of reference, not a controlling determinant of what shall be allowed in bankruptcy cases.

One of the major reforms in 1938, especially for reorganization cases, was centralized control over fees in the bankruptcy courts. See *Brown v. Gerdes*, 321 U.S. 178, 182-184 (1944) [64 S.Ct. 487, 88 L.Ed. 659]; *Leiman v. Guttman*, 336 U.S. 1, 4-9 (1949) [69 S.Ct. 371, 93 L.Ed. 453]. It was intended to guard against a recurrence of "the many sordid chapters" in "the history of fees in corporate reorganizations." *Dickinson Industrial Site, Inc. v. Cowan*, 309 U.S. 382, 388 (1940) [60 S.Ct. 595, 84 L.Ed. 819, rehearing denied 60 S.Ct. 806, 309 U.S. 698, 84 L.Ed. 1037]. In the years since then the bankruptcy bar has flourished and prospered, and persons or merit and quality have not eschewed public service in bankruptcy cases merely because bankruptcy courts, in the interest of economy in administration, have not allowed them compensation that may be earned in the private economy of business or the professions. There is no reason to believe that, in generations to come, their successors will be less persuaded by the need to serve

in the public interest because of stronger allures of private gain elsewhere.

Subsection (a) provides for compensation of paraprofessional in order to reduce the cost of administering bankruptcy cases. Paraprofessionals can be employed to perform duties which do not require the full range of skills of a qualified professional. Some courts have not hesitated to recognize paraprofessional services as compensable under existing law. An explicit provision to that effect is useful and constructive.

The last sentence of subsection (a) provides that in the case of a public company—defined in section 1101(3)—the court shall refer, after a hearing, all applications to the Securities and Exchange Commission for a report, which shall be advisory only. In Chapter S [former section 501 et seq. of this title] cases in which the Commission has appeared, it generally filed reports on fee applications. Usually, courts have accorded the SEC's views substantial weight, as representing the opinion of a disinterested agency skilled and experienced in reorganization affairs. The last sentence intends for the advisory assistance of the Commission to be sought only in case of a public company in reorganization under chapter 11.

Subsection (b) reenacts section 249 of Chapter X of the Bankruptcy Act (11 U.S.C. 649) [former section 649 of this title]. It is a codification of equitable principles designed to prevent fiduciaries in the case from engaging in the specified transactions since they are in a position to gain inside information or to shape or influence the course of the reorganization. *Wolf v. Weinstein*, 372 U.S. 633 (1963) [83 S.Ct. 969, 10 L.Ed.2d 33, rehearing denied 83 S.Ct. 1522, 373 U.S. 928, 10 L.Ed.2d 427]. The statutory bar of compensation and reimbursement is based on the principle that such transactions involve conflicts of interest. Private gain undoubtedly prompts the purchase or sale of claims or stock interests, while the fiduciary's obligation is to render loyal and disinterested service which his position of trust has imposed upon him. Subsection (b) extends to a trustee, his attorney, committees and their attorneys, or any other persons "acting in the case in a representative or fiduciary capacity." It bars compensation to any of the foregoing, who after assuming to act in such capacity has purchased or sold, directly or indirectly, claims against, or stock in the debtor. The bar is absolute. It makes no difference whether the transaction brought a gain or loss, or neither, and the court is not authorized to approve a

purchase or sale, before or after the transaction. The exception is for an acquisition or transfer "otherwise" than by a voluntary purchase or sale, such as an acquisition by bequest. See *Otis & Co. v. Insurance Bldg. Corp.*, 110 F.2d 333, 335 (C.A.1, 1940).

Subsection (c) [now (b)] is intended for no asset liquidation cases where minimal compensation for trustees is needed. The sum of \$20 will be allowed in each case, which is double the amount provided under current law.

Notes of Committee on the Judiciary, House Report No. 95-595. Section 330 authorizes compensation for services and reimbursement of expenses of officers of the estate. It also prescribes the standards on which the amount of compensation is to be determined. As noted above, the compensation allowable under this section is subject to the maxima set out in sections 326, 328, and 329. The compensation is to be reasonable, for actual necessary services rendered, based on the time, the nature, the extent, and the value of the services rendered, and on the cost of comparable services other than in a case under the bankruptcy code. The effect of the last provision is to overrule *In re Beverly Crest Convalescent Hospital, Inc.*, 548 F.2d 817 (9th Cir.1976, as amended 1977), which set an arbitrary limit on fees payable, based on the amount of a district judge's salary, and other, similar cases that require fees to be determined based on notions of conservation of the estate and economy of administration. If that case were allowed to stand, attorneys that could earn much higher incomes in other fields would leave the bankruptcy arena. Bankruptcy specialists, who enable the system to operate smoothly, efficiently, and expeditiously, would be driven elsewhere, and the bankruptcy field would be occupied by those who could not find other work and those who practice bankruptcy law only occasionally almost as a public service. Bankruptcy fees that are lower than fees in other areas of the legal profession may operate properly when the attorneys appearing in bankruptcy cases do so intermittently, because a low fee in a small segment of a practice can be absorbed by other work. Bankruptcy specialists, however, if required to accept fees in all of their cases that are consistently lower than fees they could receive elsewhere, will not remain in the bankruptcy field.

This subsection provides for reimbursement of actual, necessary expenses. It further provides for compensation of paraprofessionals employed by professional persons employed by

the estate of the debtor. The provision is included to reduce the cost of administering bankruptcy cases. In nonbankruptcy areas, attorneys are able to charge for a paraprofessional's time on an hourly basis, and not include it in overhead. If a similar practice does not pertain in bankruptcy cases then the attorney will be less inclined to use paraprofessionals even where the work involved could easily be handled by an attorney's assistant, at much lower cost to the estate. This provision is designed to encourage attorneys to use paraprofessional assistance where possible, and to insure that the estate, not the attorney, will bear the cost, to the benefit of both the estate and the attorneys involved.

Legislative Statements. Section 330(a) contains the standard of compensation adopted in H.R. 8200 as passed by the House rather than the contrary standard contained in the Senate amendment. Attorneys' fees in bankruptcy cases can be quite large and should be closely examined by the court. However bankruptcy legal services are entitled to command the same competency of counsel as other cases. In that light, the policy of this section is to compensate attorneys and other professionals serving in a case under title 11 at the same rate as the attorney or other professional would be compensated for performing comparable services other than in a case under title 11. Contrary language in the Senate report accompanying S. 2266 is rejected, and *Massachusetts Mutual Life Insurance Company v. Brock*, 405 F.2d 429, 432 (5th Cir.1968) is overruled. Notions of economy of the estate in fixing fees are outdated and have no place in a bankruptcy code.

Section 330(a)(2) of the Senate amendment is deleted although the Securities and Exchange Commission retains a right to file an advisory report under section 1109.

Section 330(b) of the Senate amendment is deleted as unnecessary, as the limitations contained therein are covered by section 328(c) of H.R. 8200 as passed by the House and contained in the House amendment.

Section 330(c) of the Senate amendment providing for a trustee to receive a fee of \$20 for each estate from the filing fee paid to the clerk is retained as section 330(b) of the House amendment. The section will encourage private trustees to serve in cases under title 11 and in pilot districts will place less of a burden on the U.S. trustee to serve in no-asset cases.

Section 330(b) of H.R. 8200 as passed by the House is retained by the House amendment as section 330(c) [15330].

1994 Act. The amendment to subsection (a) clarifies the standards for court award of professional fees in bankruptcy cases. This should help foster greater uniformity in the application for and processing and approval of fee applications.

Compensation for the services of a trustee in a chapter 7 case, as provided for in subsection (b), is increased by \$15.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Section 702(b)(2)(B) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "The amendments made by sections 113 and 117 [to § 330(b)] shall apply with respect to cases commenced under title 11 of the United States Code before, on, and after the date of the enactment of this Act [October 22, 1994]."

1986 Amendment. Subsec. (a). Pub.L. 99-554, § 211(1), substituted "notice to any parties in interest and to the United States trustee and a hearing" for "notice and a hearing".

Subsec. (d). Pub.L. 99-554, § 211(2), added subsec. (d).

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Savings Provisions; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(f), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 211, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 211, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 211, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section

302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 211, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Debtor in possession's right of compensation, see section 1107.

Officers' compensation as administrative expense, see section 503.

Library References:

C.J.S. Bankruptcy §§ 231 et seq.

West's Key No. Digests, Bankruptcy ☞ 3151-3205.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 331. Interim compensation

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the court may allow and disburse to such applicant such compensation or reimbursement.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2564.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 331 permits trustees and professional persons to apply to the court not more than once every 120 days for interim compensation and reimbursement payments. The court may permit more frequent applications if the circumstances warrant, such as in very large cases where the legal work is extensive and merits more frequent payments. The court is authorized to allow and order disbursement to the applicant of compensation and reimbursement that is otherwise allowable under section 330. The

only effect of this section is to remove any doubt that officers of the estate may apply for, and the court may approve, compensation and reimbursement during the case, instead of being required to wait until the end of the case, which in some instances, may be years. The practice of interim compensation is followed in some courts today, but has been subject to some question. This section explicitly authorizes it.

This section will apply to professionals such as auctioneers and appraisers only if they are not paid on a per job basis.

Library References:

C.J.S. Bankruptcy § 235.

West's Key No. Digests, Bankruptcy ☞3158, 3175.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

SUBCHAPTER III—ADMINISTRATION**§ 341. Meetings of creditors and equity security holders**

(a) Within a reasonable time after the order for relief in a case under this title, the United States trustee shall convene and preside at a meeting of creditors.

(b) The United States trustee may convene a meeting of any equity security holders.

(c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors.

(d) Prior to the conclusion of the meeting of creditors or equity security holders, the trustee shall orally examine the debtor to ensure that the debtor in a case under chapter 7 of this title is aware of—

(1) the potential consequences of seeking a discharge in bankruptcy, including the effects on credit history;

(2) the debtor's ability to file a petition under a different chapter of this title;

(3) the effect of receiving a discharge of debts under this title; and

(4) the effect of reaffirming a debt, including the debtor's knowledge of the provisions of section 524(d) of this title.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2564; Pub.L. 99-554, Title II, § 212, Oct. 27, 1986, 100 Stat. 3099; Pub.L. 103-394, Title I, § 115, October 22, 1994, 108 Stat. 4118.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section (a) of this section requires that there be a meeting of creditors within a reasonable time after the order for relief in the case. The Bankruptcy Act [former Title 11] and the current Rules of Bankruptcy Procedure provide for a meeting of creditors, and specify the time and manner of the meeting, and the business to be conducted. This bill leaves those matters to the rules. Under section 405(d) of the bill, the present rules will continue to govern until new rules are promulgated. Thus, pending the adoption of different rules, the present procedure for the meeting will continue.

Subsection (b) authorizes the court to order a meeting of equity security holders in cases where such a meeting would be beneficial or useful, for example, in a chapter 11 reorganization case where it may be necessary for the equity security holders to organize in order to be able to participate in the negotiation of a plan of reorganization.

Subsection (c) makes clear that the bankruptcy judge is to preside at the meeting of creditors.

Legislative Statements. Section 341(c) of the Senate amendment is deleted and a contrary provision is added indicating that the bankruptcy judge will not preside at or attend the first meeting of creditors or equity security holders but a discharge hearing for all individuals will be held at which the judge will preside.

1994 Act. Subsection (d), applicable only in chapter 7 cases, requires the trustee to orally examine the debtor to ensure that he or she is informed about the effects of bankruptcy, both positive and negative. Its purpose is solely informational; it is not intended to be an inter-

rogation to which the debtor must give any specific answers or which could be used against the debtor in some later proceeding. No separate record need be kept of the examination since it will be preserved along with the remainder of the record of the meeting, which normally is recorded on tape.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

1986 Amendment. Subsec. (a). Pub.L. 99-554, § 212(1), substituted "this title, the United States trustee shall convene and preside at a meeting of creditors" for "this title, there shall be a meeting of creditors".

Subsec. (b). Pub.L. 99-554, § 212(2), substituted "The United States trustee may convene a meeting" for "The court may order a meeting".

Subsec. (c). Pub.L. 99-554, § 212(3), substituted "this section including any final meeting of creditors." for "this section."

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases

Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees.

Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 212, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 212, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 212, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and,

except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 212, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Cross References

Election of

Creditors' committee, see section 705.

Trustee, see section 702.

Inapplicability of this section in railroad reorganization cases, see section 1161.

Library References:

C.J.S. Bankruptcy §§ 193, 373.

West's Key No. Digests, Bankruptcy ☞3024.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 342. Notice

(a) There shall be given such notice as is appropriate, including notice to any holder of a community claim, of an order for relief in a case under this title.

(b) Prior to the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give written notice to such individual that indicates each chapter of this title under which such individual may proceed.

(c) If notice is required to be given by the debtor to a creditor under this title, any rule, any applicable law, or any order of the court, such notice shall contain the name, address, and taxpayer identification number of the debtor, but the failure of such notice to contain such information shall not invalidate the legal effect of such notice.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2565; Pub.L. 98-353, Title III, §§ 302, 435, July 10, 1984, 98 Stat. 352, 370; Pub.L. 103-394, Title II, § 225, October 22, 1994, 108 Stat. 4131.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) of section 342 requires the clerk of the bankruptcy court to give notice of the order for relief. The rules will prescribe to whom the notice should be sent and in what manner notice will be given. The rules already prescribe such things, and they will continue to govern unless changed as provided in section 404(a) of the bill. Due process will certainly require notice to all creditors and equity security holders. State and Federal governmental representatives responsible for collecting taxes will also receive notice. In cases where the debtor is subject to regulation, the regulatory agency with jurisdiction will receive notice. In order to insure maximum notice to all parties in interest, the Rules will include notice by publication in appropriate cases and for appropriate issues. Other notices will be given as appropriate.

Subsections (b) and (c) are derived from section 21g of the Bankruptcy Act [former section 44(g) of this title]. They specify that the trustee may file notice of the commencement of the case in land recording offices in order to give notice of the pendency of the case to potential transferees of the debtor's real property. Such filing is unnecessary in the county in which the bankruptcy case is commenced. If notice is properly filed, a subsequent purchaser of the property will not be a bona fide purchaser.

Otherwise, a purchaser, including a purchaser at a judicial sale, that has no knowledge of the case, is not prevented from obtaining the status of a bona fide purchaser by the mere commencement of the case. "County" is defined in title 1 of the United States Code [section 2 of Title 1, General Provisions] to include other political subdivisions where counties are not used.

Legislative Statements. Section 342(b) and (c) of the Senate amendment are adopted in principle but moved to section 549(c), in lieu of section 342(b) of H.R. 8200 as passed by the House.

Section 342(c) of H.R. 8200 as passed by the House is deleted as a matter to be left to the Rules of Bankruptcy Procedure.

1994 Act. The amendment requires that notices to creditors set forth the debtor's name, address, and taxpayer identification (or social security) number. The failure of a notice to contain such information will not invalidate its legal effect. For example, such failure could not result in a debtor failing to obtain a discharge with respect to a particular creditor.

The Official Bankruptcy Forms have been amended so that the information required by this section is a part of the caption on every notice given in a bankruptcy case. As with other similar requirements, the court retains

the authority to waive this requirement in compelling circumstances, such as those of a domestic violence victim who must conceal her residence for her own safety.

Effective Date of 1994 Amendments.

Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Instructions in notice to customers, see section 765.

Net equity defined in relation to payments made by customers to trustee within 60 days after notice, see section 741.

Notice in

Commodity broker liquidation cases, see section 762.

Stockbroker liquidation cases, see section 743.

Library References:

C.J.S. Bankruptcy §§ 30, 275.

West's Key No. Digests, Bankruptcy ⇨2131, 2900(2).

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 343. Examination of the debtor

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2565; Pub.L. 98-353, Title III, § 436, July 10, 1984, 98 Stat. 370; Pub.L. 99-554, Title II, § 213, Oct. 27, 1986, 100 Stat. 3099.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section, derived from section 21a of the Bankruptcy Act [former section 44(a) of this title] requires the debtor to appear at the meeting of creditors and submit to examination under oath. The purpose of the examination is to enable creditors and the trustee to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge. The scope of the examination under this section will be governed by the Rules of Bankruptcy Procedure, as it is today. See rules 205(d), 10-213(c), and 11-26. It is expected that the scope prescribed by these rules for liquidation cases, that is, “only the debtor’s

acts, conduct, or property, or any matter that may affect the administration of the estate, or the debtor’s right to discharge” will remain substantially unchanged. In reorganization cases, the examination would be broader, including inquiry into the liabilities and financial condition of the debtor, the operation of his business, and the desirability of the continuance thereof, and other matters relevant to the case and to the formulation of the plan. Examination of other persons in connection with the bankruptcy case is left completely to the rules, just as examination of witnesses in civil cases is governed by the Federal Rules of Civil Procedure [Title 28, Judiciary and Judicial Procedure].

1986 Amendment. Pub.L. 99-554, § 213, substituted "Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section." for "Creditors, any indenture trustee, or any trustee or examiner in the case may examine the debtor."

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11, Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 213, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 213 not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see sec-

tion 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 213 not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 213, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Inapplicability of this section in railroad reorganization cases, see section 1161.

Library References:

C.J.S. Bankruptcy § 204.

West's Key No. Digests, Bankruptcy Ⓒ3040.1-3048.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 344. Self-incrimination; immunity

Immunity for persons required to submit to examination, to testify, or to provide information in a case under this title may be granted under part V of title 18.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2565.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Part V of title 18 of the United States Code [section 6001 et seq. of Title 18, Crimes and Criminal Procedure] governs the granting of immunity to witnesses before Federal tribunals. The immunity provided under part V is only use immunity, not transactional immunity. Part V applies to all proceedings before Federal courts, before Federal grand juries, before administrative agencies, and before Congressional committees. It requires the Attorney General or the U.S. attorney to request or to approve any grant of immunity, whether before a court, grand jury, agency, or congressional committee.

This section carries part V [section 6001 et seq. of Title 18, Crimes and Criminal Procedure] over into bankruptcy cases. Thus, for a witness to be ordered to testify before a bankruptcy court in spite of a claim of privilege, the U.S. attorney for the district in which the court sits would have to request from the district court for that district the immunity order. The rule would apply to both debtors, creditors, and any other witnesses in a bankruptcy case. If the immunity were granted, the witness would be required to testify. If not, he could claim the privilege against self-incrimination.

Part V [section 6001 et seq. of Title 18, Crimes and Criminal Procedure] is a significant departure from current law. Under section 7a(10) of the Bankruptcy Act [former section 25(a)(10) of this title] a debtor is required to testify in all circumstances, but any testimony he gives may not be used against him in any criminal proceeding, except testimony given in any hearing on objections to discharge. With that exception, section 7a(10) amounts to a blanket grant of use immunity to all debtors. Immunity for other witnesses in bankruptcy courts today is governed by part V of title 18.

The consequences of a claim of privileges by a debtor under proposed law and under current law differ as well. Under section 14c(6) of current law [former section 32(c)(6) of this title], any refusal to answer a material question approved by the court will result in the denial of a discharge, even if the refusal is based on the privilege against self incrimination. Thus, the debtor is confronted with the choice between losing his discharge and opening himself up to possible criminal prosecution.

Under section 727(a)(6) of the proposed title 11, a debtor is only denied a discharge if he refuses to testify after having been granted immunity. If the debtor claims the privilege and the U.S. attorney does not request immunity from the district courts, then the debtor

may refuse to testify and still retain his right to a discharge. It removes the Scylla and Charibdis choice for debtors that exist under the Bankruptcy Act.

References in Text. Part V of title 18, referred to in text, is classified to section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Cross References

Applicability of this section in chapter 9 cases, see section 901

Library References:

C.J.S. Criminal Law §§ 78–86; Witnesses §§ 16, 430 et seq.

West's Key No. Digests, Criminal Law Ⓒ42; Witnesses Ⓒ5, 292–310.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 345. Money of estates

(a) A trustee in a case under this title may make such deposit or investment of the money of the estate for which such trustee serves as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.

(b) Except with respect to a deposit or investment that is insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States, the trustee shall require from an entity with which such money is deposited or invested—

(1) a bond—

(A) in favor of the United States;

(B) secured by the undertaking of a corporate surety approved by the United States trustee for the district in which the case is pending; and

(C) conditioned on—

(i) a proper accounting for all money so deposited or invested and for any return on such money;

(ii) prompt repayment of such money and return; and

(iii) faithful performance of duties as a depository; or

(2) the deposit of securities of the kind specified in section 9303 of title 31;

unless the court for cause orders otherwise.

(c) An entity with which such moneys are deposited or invested is authorized to deposit or invest such moneys as may be required under this section.

Pub.L. 95–598, Nov. 6, 1978, 92 Stat. 2565; Pub.L. 97–258, § 3(c), Sept. 13, 1982, 96 Stat. 1064; Pub.L. 98–353, Title III, § 437, July 10, 1984, 98 Stat. 370; Pub.L. 99–554, Title II, § 214, Oct. 27, 1986, 100 Stat. 3099; Pub.L. 103–394, Title II, § 210, October 22, 1994, 108 Stat. 4125.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section is a significant departure from section 61 of the Bankruptcy Act [former section 101 of this title]. It permits a trustee in a bankruptcy case to make such deposit or investment of the money of the estate for which he serves as will yield the maximum reasonable net return on the money, taking into account the safety of such deposit or investment. Under current law, the trustee is permitted to deposit money only with banking institutions. Thus, the trustee is generally unable to secure a high rate of return on money of estates pending distribution, to the detriment of creditors. Under this section, the trustee may make deposits in savings and loans, may purchase government bonds, or make such other deposit or investment as is appropriate. Under proposed 11 U.S.C. 541(a)(6), and except as provided in subsection (c) of this section, any interest or gain realized on the deposit or investment of funds under this section will become property of the estate, and will thus enhance the recovery of creditors.

In order to protect the creditors, subsection (b) requires certain precautions against loss of the money so deposited or invested. The trustee must require from a person with which he deposits or invests money of an estate a bond in favor of the United States secured by approved corporate surety and conditioned on a proper accounting for all money deposited or invested and for any return on such money. Alternately, the trustee may require the deposit of securities of the kind specified in section 15 of title 6 of the United States Code [section 15 of Title 6, Official and Penal Bonds], which governs the posting of security by banks that receive public moneys on deposit. These bonding requirements do not apply to deposits or investments that are insured or guaranteed the United States or a department, agency, or instrumentality of the United States, or that are backed by the full faith and credit of the United States.

These provisions do not address the question of aggregation of funds by a private chapter 13 trustee and are not to be construed as excluding such possibility. The Rules of Bankruptcy Procedure may provide for aggregation under appropriate circumstances and adequate safeguards in cases where there is a significant need, such as in districts in which there is a standing chapter 13 trustee. In such case, the interest or return on the funds would help

defray the cost of administering the cases in which the standing trustee serves.

Legislative Statements. The House amendment moves section 345(c) of the House bill to chapter 15 as part of the pilot program for the U.S. trustees. The bond required by section 345(b) may be a blanket bond posted by the financial depository sufficient to cover deposits by trustees in several cases, as is done under current law.

1994 Act. This amendment allows the courts to approve investments other than those permitted by subsection (b) for just cause, thereby overruling *In re Columbia Gas Systems, Inc.*, 1994 WL 463514 (3rd Cir. (Del.)).

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

1986 Amendment. Subsec. (b)(1)(B). Pub.L. 99-554, § 214, substituted "approved by the United States trustee for the district" for "approved by the court for the district".

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 214, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the

expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 214, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 214, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such

election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 214, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy § 203.

West's Key No. Digests, Bankruptcy Ⓒ3039.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 346. Special tax provisions

(a) Except to the extent otherwise provided in this section, subsections (b), (c), (d), (e), (g), (h), (i), and (j) of this section apply notwithstanding any State or local law imposing a tax, but subject to the Internal Revenue Code of 1986.

(b)(1) In a case under chapter 7, 12, or 11 of this title concerning an individual, any income of the estate may be taxed under a State or local law imposing a tax on or measured by income only to the estate, and may not be taxed to such individual. Except as provided in section 728 of this title, if such individual is a partner in a partnership, any gain or loss resulting from a distribution of property from such partnership, or any distributive share of income, gain, loss, deduction, or credit of such individual that is distributed, or considered distributed, from such partnership, after the commencement of the case is gain, loss, income, deduction, or credit, as the case may be, of the estate.

(2) Except as otherwise provided in this section and in section 728 of this title, any income of the estate in such a case, and any State or local tax on or measured by such income, shall be computed in the same manner as the income and the tax of an estate.

(3) The estate in such a case shall use the same accounting method as the debtor used immediately before the commencement of the case.

(c)(1) The commencement of a case under this title concerning a corporation or a partnership does not effect a change in the status of such corporation or partnership for the purposes of any State or local law imposing a tax on or measured by income. Except as otherwise provided in this section and in section 728 of this title, any income of the estate in such case may be taxed only as though such case had not been commenced.

(2) In such a case, except as provided in section 728 of this title, the trustee shall make any tax return otherwise required by State or local law to be filed by or on behalf of such corporation or partnership in the same manner and form as such corporation or partnership, as the case may be, is required to make such return.

(d) In a case under chapter 13 of this title, any income of the estate or the debtor may be taxed under a State or local law imposing a tax on or measured by income only to the debtor, and may not be taxed to the estate.

(e) A claim allowed under section 502(f) or 503 of this title, other than a claim for a tax that is not otherwise deductible or a capital expenditure that is not otherwise deductible, is deductible by the entity to which income of the estate is taxed unless such claim was deducted by another entity, and a deduction for such a claim is deemed to be a deduction attributable to a business.

(f) The trustee shall withhold from any payment of claims for wages, salaries, commissions, dividends, interest, or other payments, or collect, any amount required to be withheld or collected under applicable State or local tax law, and shall pay such withheld or collected amount to the appropriate governmental unit at the time and in the manner required by such tax law, and with the same priority as the claim from which such amount was withheld was paid.

(g)(1) Neither gain nor loss shall be recognized on a transfer—

(A) by operation of law, of property to the estate;

(B) other than a sale, of property from the estate to the debtor; or

(C) in a case under chapter 11 or 12 of this title concerning a corporation, of property from the estate to a corporation that is an affiliate participating in a joint plan with the debtor, or that is a successor to the debtor under the plan, except that gain or loss may be recognized to the same extent that

such transfer results in the recognition of gain or loss under section 371 of the Internal Revenue Code of 1986.

(2) The transferee of a transfer of a kind specified in this subsection shall take the property transferred with the same character, and with the transferor's basis, as adjusted under subsection (j)(5) of this section; and holding period.

(h) Notwithstanding sections 728(a) and 1146(a) of this title, for the purpose of determining the number of taxable periods during which the debtor or the estate may use a loss carryover or a loss carryback, the taxable period of the debtor during which the case is commenced is deemed not to have been terminated by such commencement.

(i)(1) In a case under chapter 7, 12, or 11 of this title concerning an individual, the estate shall succeed to the debtor's tax attributes, including—

- (A) any investment credit carryover;
- (B) any recovery exclusion;
- (C) any loss carryover;
- (D) any foreign tax credit carryover;
- (E) any capital loss carryover; and
- (F) any claim of right.

(2) After such a case is closed or dismissed, the debtor shall succeed to any tax attribute to which the estate succeeded under paragraph (1) of this subsection but that was not utilized by the estate. The debtor may utilize such tax attributes as though any applicable time limitations on such utilization by the debtor were suspended during the time during which the case was pending.

(3) In such a case, the estate may carry back any loss of the estate to a taxable period of the debtor that ended before the order for relief under such chapter the same as the debtor could have carried back such loss had the debtor incurred such loss and the case under this title had not been commenced, but the debtor may not carry back any loss of the debtor from a taxable period that ends after such order to any taxable period of the debtor that ended before such order until after the case is closed.

(j)(1) Except as otherwise provided in this subsection, income is not realized by the estate, the debtor, or a successor to the debtor by reason of forgiveness or discharge of indebtedness in a case under this title.

(2) For the purposes of any State or local law imposing a tax on or measured by income, a deduction with respect to a liability may not be allowed for any taxable period during or after which such liability is forgiven or discharged under this title. In this paragraph, "a deduction with respect to a liability" includes a capital loss incurred on the disposition of a capital asset with respect to a liability that was incurred in connection with the acquisition of such asset.

(3) Except as provided in paragraph (4) of this subsection, for the purpose of any State or local law imposing a tax on or measured by income, any net operating loss of an individual or corporate debtor, including a net operating loss carryover to such debtor, shall be reduced by the amount of indebtedness forgiven or discharged in a case under this title, except to the extent that such forgiveness or discharge resulted in a disallowance under paragraph (2) of this subsection.

(4) A reduction of a net operating loss or a net operating loss carryover under paragraph (3) of this subsection or of basis under paragraph (5) of this subsection is not required to the extent that the indebtedness of an individual or corporate debtor forgiven or discharged—

(A) consisted of items of a deductible nature that were not deducted by such debtor; or

(B) resulted in an expired net operating loss carryover or other deduction that—

(i) did not offset income for any taxable period; and

(ii) did not contribute to a net operating loss in or a net operating loss carryover to the taxable period during or after which such indebtedness was discharged.

(5) For the purposes of a State or local law imposing a tax on or measured by income, the basis of the debtor's property or of property transferred to an entity required to use the debtor's basis in whole or in part shall be reduced by the lesser of—

(A)(i) the amount by which the indebtedness of the debtor has been forgiven or discharged in a case under this title; minus

(ii) the total amount of adjustments made under paragraphs (2) and (3) of this subsection; and

(B) the amount by which the total basis of the debtor's assets that were property of the estate before such forgiveness or discharge exceeds the debtor's total liabilities that were liabilities both before and after such forgiveness or discharge.

(6) Notwithstanding paragraph (5) of this subsection, basis is not required to be reduced to the extent that the debtor elects to treat as taxable income, of the taxable period in which indebtedness is forgiven or discharged, the amount of indebtedness forgiven or discharged that otherwise would be applied in reduction of basis under paragraph (5) of this subsection.

(7) For the purposes of this subsection, indebtedness with respect to which an equity security, other than an interest of a limited partner in a limited partnership, is issued to the creditor to whom such indebtedness was owed, or that is forgiven as a contribution to capital by an equity security holder other than a limited partner in the debtor, is not forgiven or discharged in a case under this title—

(A) to any extent that such indebtedness did not consist of items of a deductible nature; or

(B) if the issuance of such equity security has the same consequences under a law imposing a tax on or measured by income to such creditor as a payment in cash to such creditor in an amount equal to the fair market value of such equity security, then to the lesser of—

(i) the extent that such issuance has the same such consequences; and

(ii) the extent of such fair market value.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2565; Pub.L. 98-353, Title III, § 438, July 10, 1984, 98 Stat. 370; Pub.L. 99-554, Title II, §§ 257(g), 283(c), Oct. 27, 1986,

100 Stat. 3114, 3116; Pub.L. 103-394, Title V, § 501(d)(4), October 22, 1994, 108 Stat. 4143.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) indicates that subsections (b), (c), (d), (e), (g), (h), (i), and (j) apply notwithstanding any State or local tax law, but are subject to Federal tax law.

Subsection (b)(1) provides that in a case concerning an individual under chapter 7 or 11 of title 11, income of the estate is taxable only to the estate and not to the debtor. The second sentence of the paragraph provides that if such individual is a partner, the tax attributes of the partnership are distributable to the partner's estate rather than to the partner, except to the extent that section 728 of title 11 provides otherwise.

Subsection (b)(2) states a general rule that the estate of an individual is to be taxed as an estate. The paragraph is made subject to the remainder of section 346 and section 728 of title 11.

Subsection (b)(3) requires the accounting method, but not necessarily the accounting period, of the estate to be the same as the method used by the individual debtor.

Subsection (c)(1) states a general rule that the estate of a partnership or a corporated debtor is not a separate entity for tax purposes. The income of the debtor is to be taxed as if the case were not commenced, except as provided in the remainder of section 346 and section 728.

Subsection (c)(2) requires the trustee, except as provided in section 728 of title 11, to file all tax returns on behalf of the partnership or corporation during the case.

Subsection (d) indicates that the estate in a chapter 13 case is not a separate taxable entity and that all income of the estate is to be taxed to the debtor.

Subsection (e) establishes a business deduction consisting of allowed expenses of administration except for tax or capital expenses that are not otherwise deductible. The deduction may be used by the estate when it is a separate taxable entity or by the entity to which the income of the estate is taxed when it is not.

Subsection (f) imposes a duty on the trustee to comply with any Federal, State, or local tax

law requiring withholding or collection of taxes from any payment of wages, salaries, commissions, dividends, interest, or other payments. Any amount withheld is to be paid to the taxing authority at the same time and with the same priority as the claim from which such amount withheld was paid.

Subsection (g)(1)(A) indicates that neither gain nor loss is recognized on the transfer by law of property from the debtor or a creditor to the estate. Subparagraph (B) provides a similar policy if the property of the estate is returned from the estate to the debtor other than by a sale of property to debtor. Subparagraph (C) also provides for nonrecognition of gain or loss in a case under chapter 11 if a corporate debtor transfers property to a successor corporation or to an affiliate under a joint plan. An exception is made to enable a taxing authority to cause recognition of gain or loss to the extent provided in IRC section 371 (as amended by section 109 of this bill) [section 371 of Title 26, Internal Revenue Code].

Subsection (g)(2) provides that any of the three kinds of transferees specified in paragraph (1) take the property with the same character, holding period, and basis in the hands of the transferor at the time of such transfer. The transferor's basis may be adjusted under section 346(j)(5) even if the discharge of indebtedness occurs after the transfer of property. Of course, no adjustment will occur if the transfer is from the debtor to the estate or if the transfer is from an entity that is not discharged.

Subsection (h) provides that the creation of the estate of an individual under chapter 7 or 11 of title 11 as a separate taxable entity does not affect the number of taxable years for purposes of computing loss carryovers or carrybacks. The section applies with respect to carryovers or carrybacks of the debtor transferred into the estate under section 346(i)(1) of title 11 or back to the debtor under section 346(i)(2) of title 11.

Subsection (i)(1) states a general rule that an estate that is a separate taxable entity nevertheless succeeds to all tax attributes of the debtor. The six enumerated attributes are illustrative and not exhaustive.

Subsection (i)(2) indicates that attributes passing from the debtor into an estate that is a separate taxable entity will return to the debtor if unused by the estate. The debtor is permitted to use any such attribute as though the case had not been commenced.

Subsection (i)(3) permits an estate that is a separate taxable entity to carryback losses of the estate to a taxable period of the debtor that ended before the case was filed. The estate is treated as if it were the debtor with respect to time limitations and other restrictions. The section makes clear that the debtor may not carryback any loss of his own from a tax year during the pendency of the case to such a period until the case is closed. No tolling of any period of limitation is provided with respect to carrybacks by the debtor of post-petition losses.

Subsection (j) sets forth seven special rules treating with the tax effects of forgiveness or discharge of indebtedness. The terms "forgiveness" and "discharge" are redundant, but are used to clarify that "discharge" in the context of a special tax provision in title 11 includes forgiveness of indebtedness whether or not such indebtedness is "discharged" in the bankruptcy sense.

Paragraph (1) states the general rule that forgiveness of indebtedness is not taxable except as otherwise provided in paragraphs (2)–(7). The paragraph is patterned after sections 268, 395, and 520 of the Bankruptcy Act [former sections 668, 795, and 920 of this title].

Paragraph (2) disallows deductions for liabilities of a deductible nature in any year during or after the year of cancellation of such liabilities. For the purposes of this paragraph, "a deduction with respect to a liability" includes a capital loss incurred on the disposition of a capital asset with respect to a liability that was incurred in connection with the acquisition of such asset.

Paragraph (3) causes any net operating loss of a debtor that is an individual or corporation to be reduced by any discharge of indebtedness except as provided in paragraphs (2) or (4). If a deduction is disallowed under paragraph (2), then no double counting occurs. Thus, paragraph (3) will reflect the reduction of losses by liabilities that have been forgiven, including deductible liabilities or nondeductible liabilities such as repayment of principal on borrowed funds.

Paragraph (4) specifically excludes two kinds of indebtedness from reduction of net operat-

ing losses under paragraph (3) or from reduction of basis under paragraph (5). Subparagraph (A) excludes items of a deductible nature that were not deducted or that could not be deducted such as gambling losses or liabilities for interest owed to a relative of the debtor. Subparagraph (B) excludes indebtedness of a debtor that is an individual or corporation that resulted in deductions which did not offset income and that did not contribute to an unexpired net operating loss or loss carryover. In these situations, the debtor has derived no tax benefit so there is no need to incur an offsetting reduction.

Paragraph (5) provides a two-point test for reduction of basis. The paragraph replaces sections 270, 396, and 522 of the Bankruptcy Act [former sections 670, 796, and 922 of this title]. Subparagraph (A) sets out the maximum amount by which basis may be reduced—the total indebtedness forgiven less adjustments made under paragraph (2) and (3). This avoids double counting. If a deduction is disallowed under paragraph (2) or a carryover is reduced under paragraph (3) then the tax benefit is neutralized, and there is no need to reduce basis. Subparagraph (B) reduces basis to the extent the debtor's total basis of assets before the discharge exceeds total preexisting liabilities still remaining after discharge of indebtedness. This is a "basis solvency" limitation which differs from the usual test of solvency because it measures against the remaining liabilities the benefit aspect of assets, their basis, rather than their value. Paragraph (5) applies so that any transferee of the debtor's property who is required to use the debtor's basis takes the debtor's basis reduced by the lesser of (A) and (B). Thus, basis will be reduced, but never below a level equal to undischarged liabilities.

Paragraph (6) specifies that basis need not be reduced under paragraph (5) to the extent the debtor treats discharged indebtedness as taxable income. This permits the debtor to elect whether to recognize income, which may be advantageous if the debtor anticipates subsequent net operating losses, rather than to reduce basis.

Paragraph (7) establishes two rules excluding from the category of discharged indebtedness certain indebtedness that is exchanged for an equity security issued under a plan or that is forgiven as a contribution to capital by an equity security holder. Subparagraph (A) creates the first exclusion to the extent indebted-

ness consisting of items not of a deductible nature is exchanged for an equity security, other than the interests of a limited partner in a limited partnership, issued by the debtor or is forgiven as a contribution to capital by an equity security holder. Subparagraph (B) excludes indebtedness consisting of items of a deductible nature, if the exchange of stock for debts has the same effect as a cash payment equal to the value of the equity security, in the amount of the fair market value of the equity security or, if less, the extent to which such exchange has such effect. The two provisions treat the debtor as if it had originally issued stock instead of debt. Subparagraph (B) rectifies the inequity under current law between a cash basis and accrual basis debtor concerning the issuance of stock in exchange for previous services rendered that were of a greater value than the stock. Subparagraph (B) also changes current law by taxing forgiveness of indebtedness to the extent that stock is exchanged for the accrued interest component of a security, because the recipient of such stock would not be regarded as having received money under the *Carman* doctrine.

Legislative Statements. Section 346 of the House amendment, together with sections 728 and 1146, represent special tax provisions applicable in bankruptcy. The policy contained in those sections reflects the policy that should be applied in Federal, State, and local taxes in the view of the House Committee on the Judiciary. The House Ways and Means Committee and the Senate Finance Committee did not have time to process a bankruptcy tax bill during the 95th Congress. It is anticipated that early in the 96th Congress, and before the effective date of the bankruptcy code [this title], the tax committees of Congress will have an opportunity to consider action with respect to amendments to the Internal Revenue Code [Title 26] and the special tax provisions in title 11. Since the special tax provisions are likely to be amended during the first part of the 96th Congress, it is anticipated that the bench and bar will also study and comment on these special tax provisions prior to their revision.

State and local rules. This section provides special tax provisions dealing with the treatment, under State or local, but not Federal, tax law, of the method of taxing bankruptcy estates of individuals, partnerships, and corporations; survival and allocation of tax attributes between the bankrupt and the estate; return filing requirements; and the tax treatment of income from discharge of indebted-

ness. The Senate bill removed these rules pending adoption of Federal rules on these issues in the next Congress. The House amendment returns the State and local tax rules to section 346 so that they may be studied by the bankruptcy and tax bars who may wish to submit comments to Congress.

Withholding rules. Both the House bill and Senate amendment provide that the trustee is required to comply with the normal withholding rules applicable to the payment of wages and other payments. The House amendment retains this rule for State and local taxes only. The treatment of withholding of Federal taxes will be considered in the next Congress.

Section 726 of the Senate amendment provides that the rule requiring pro rata payment of all expenses within a priority category does not apply to the payment of amounts withheld by a bankruptcy trustee. The purpose of this rule was to insure that the trustee pay the full amount of the withheld taxes to the appropriate governmental tax authority. The House amendment deletes this rule as unnecessary because the existing practice conforms essentially to that rule. If the trustee fails to pay over in full amounts that he withheld, it is a violation of his trustee's duties which would permit the taxing authority to sue the trustee on his bond.

When taxes considered "incurred": The Senate amendment contained rules of general application dealing with when a tax is "incurred" for purposes of the various tax collection rules affecting the debtor and the estate. The House amendment adopts the substance of these rules and transfers them to section 507 of title 11.

Penalty for failure to pay tax. The Senate amendment contains a rule which relieves the debtor and the trustee from certain tax penalties for failure to make timely payment of a tax to the extent that the bankruptcy rules prevent the trustee or the debtor from paying the tax on time. Since most of these penalties relate to Federal taxes, the House amendment deletes these rules pending consideration of Federal tax rules affecting bankruptcy in the next Congress.

References in Text. The Internal Revenue Code of 1954, referred to in subsec. (a), is classified to section 1 et seq. of Title 26, Internal Revenue Code.

Section 371 of the Internal Revenue Code of 1954, referred to in subsec. (g)(1)(C), is classified to section 371 of Title 26.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(g), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Request for determination of tax effects of reorganization plan, see section 1146.

Library References:

C.J.S. Taxation § 1094.

West's Key No. Digests, Taxation ☞1021.1.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 347. Unclaimed property

(a) Ninety days after the final distribution under section 726, 1226, or 1326 of this title in a case under chapter 7, 12, or 13 of this title, as the case may be, the trustee shall stop payment on any check remaining unpaid, and any remaining property of the estate shall be paid into the court and disposed of under chapter 129 of title 28.

(b) Any security, money, or other property remaining unclaimed at the expiration of the time allowed in a case under chapter 9, 11, or 12 of this title for the presentation of a security or the performance of any other act as a condition to participation in the distribution under any plan confirmed under section 943(b), 1129, 1173, or 1225 of this title, as the case may be, becomes the property of the debtor or of the entity acquiring the assets of the debtor under the plan, as the case may be.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2568; Pub.L. 99-554, Title II, § 257(h), Oct. 27, 1986, 100 Stat. 3114.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 347 is derived from Bankruptcy Act § 66 [former section 106 of this title]. Subsection (a) requires the trustee to stop payment on any distribution check that is unpaid 90 days after the final distribution in a case under chapter 7 or 13.

The unclaimed funds, and any other property of the estate are paid into the court and disposed of under chapter 129 of title 28 [section 2041 et seq. of Title 28, Judiciary and Judicial Procedure], which requires the clerk of court to hold the funds for their owner for 5 years, after which they escheat to the Treasury.

Subsection (b) specifies that any property remaining unclaimed at the expiration of the time allowed in a chapter 9 or 11 case for presentation (exchange) of securities or the performance of any other act as a condition to participation in the plan reverts to the debtor or the entity acquiring the assets of the debtor under the plan. Conditions to participation under a plan include such acts as cashing a check, surrendering securities for cancellation, and so on. Similar provisions are found in sections 96(d) [former section 415(d) of this title] and 205 [former section 605 of this title] of current law.

Legislative Statements. Section 347(a) of the House amendment adopts a comparable provision contained in the Senate amendment instructing the trustee to stop payment on any check remaining unpaid more than 90 days

after the final distribution in a case under Chapter 7 or 13. Technical changes are made in section 347(b) to cover distributions in a railroad reorganization.

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(h), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Cross References

Applicability of subsec. (b) of this section in chapter 9 cases, see section 901.

Library References:

C.J.S. Bankruptcy §§ 351, 355.

West's Key No. Digests, Bankruptcy ⇨3445.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 348. Effect of conversion

(a) Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

(b) Unless the court for cause orders otherwise, in sections 701(a), 727(a)(10), 727(b), 728(a), 728(b), 1102(a), 1110(a)(1), 1121(b), 1121(c), 1141(d)(4), 1146(a), 1146(b), 1201(a), 1221, 1228(a), 1301(a), and 1305(a) of this title, "the order for relief under this chapter" in a chapter to which a case has been converted under section 706, 1112, 1208, or 1307 of this title means the conversion of such case to such chapter.

(c) Sections 342 and 365(d) of this title apply in a case that has been converted under section 706, 1112, 1208, or 1307 of this title, as if the conversion order were the order for relief.

(d) A claim against the estate or the debtor that arises after the order for relief but before conversion in a case that is converted under section 1112, 1208, or 1307 of this title, other than a claim specified in section 503(b) of this title, shall be treated for all purposes as if such claim had arisen immediately before the date of the filing of the petition.

(e) Conversion of a case under section 706, 1112, 1208, or 1307 of this title terminates the service of any trustee or examiner that is serving in the case before such conversion.

(f)(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion; and

(B) valuations of property and of allowed secured claims in the chapter 13 case shall apply in the converted case, with allowed secured claims reduced to the extent that they have been paid in accordance with the chapter 13 plan.

(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property in the converted case shall consist of the property of the estate as of the date of conversion.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2568; Pub.L. 99-554, Title II, § 257(i), Oct. 27, 1986, 100 Stat. 3115; Pub.L. 103-394, Title III, § 311, Title V, § 501(d)(5), October 22, 1994, 108 Stat. 4138, 4144.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section governs the effect of the conversion of a case from one chapter of the bankruptcy code [this title] to another chapter. Subsection (a) specifies that the date of the filing of the petition, the commencement of the case, or the order for relief are unaffected by conversion, with some exceptions specified in subsections (b) and (c).

Subsection (b) lists certain sections in the operative chapters of the bankruptcy code [this title] in which there is a reference to “the order for relief under this chapter.” In those sections, the reference is to be read as a reference to the conversion order if the case has been converted into the particular chapter. Subsection (c) specifies that notice is to be given of the conversion order the same as notice was given of the order for relief, and that the time the trustee (or debtor in possession) has for assuming or rejecting executory contracts recommences, thus giving an opportunity for a newly appointed trustee to familiarize himself with the case.

Subsection (d) provides for special treatment of claims that arise during chapter 11 or 13 cases before the case is converted to a liquidation case. With the exception of claims specified in proposed 11 U.S.C. 503(b) (administrative expenses), preconversion claims are treated the same as prepetition claims.

Subsection (e) provides that conversion of a case terminates the service of any trustee serving in the case prior to conversion.

Legislative Statements. The House amendment adopts section 348(b) of the Senate amendment with slight modifications, as more accurately reflecting sections to which this particular effect of conversion should apply.

Section 348(e) of the House amendment is a stylistic revision of similar provisions contained in H.R. 8200 as passed by the House and in the Senate amendment. Termination of services is expanded to cover any examiner serving in the case before conversion, as done in H.R. 8200 as passed by the House.

1994 Act. The amendment adds subsection (f), clarifying the Code to resolve a split in the case of law about what property is in the bankruptcy estate when a debtor converts from chapter 13 to chapter 7. The problem arises because in chapter 13 (and chapter 12), any property acquired after the petition becomes property of the estate, at least until confirmation of a plan. Some courts have held that if the case is converted, all of this after-acquired property becomes part of the estate in the converted chapter 7 case, even though the statutory provisions making it property of the estate does not apply to chapter 7. Other courts

have held that the property of the estate in a converted case is the property the debtor had when the original chapter 13 petition was filed.

The amendment adopts the latter position. However, it also gives the court discretion, in a case in which the debtor has abused the right to convert and converted in bad faith, to order that all property held at the time of conversion shall constitute property of the estate in the converted case.

Effective Date of 1994 Amendments.

Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b),

this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(i), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Library References:

C.J.S. Bankruptcy §§ 42, 380, 418, 437.

West's Key No. Digests, Bankruptcy ☞2331, 2332, 3594, 3673, 3717.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 349. Effect of dismissal

(a) Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2569; Pub.L. 98-353, Title III, § 303, July 10, 1984, 98 Stat. 352; Pub.L. 103-394, Title V, § 501(d)(6), October 22, 1994, 108 Stat. 4144.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) specifies that unless the court for cause orders otherwise, the dismissal of a case is without prejudice. The debtor is not barred from receiving a discharge in a later case of debts that were dischargeable in the case dismissed. Of course, this subsection refers only to pre-discharge dismissals. If the debtor has already received a discharge and it is not revoked, then the debtor would be barred under section 727(a) from receiving a discharge in a subsequent liquidation case for six years. Dismissal of an involuntary on the merits will generally not give rise to adequate cause so as to bar the debtor from further relief.

Subsection (b) specifies that the dismissal reinstates proceedings or custodianships that were superseded by the bankruptcy case, reinstates avoided transfers, reinstates voided liens, vacates any order, judgment, or transfer ordered as a result of the avoidance of a transfer, and reverts the property of the estate in the entity in which the property was vested at the commencement of the case. The court is permitted to order a different result for cause. The basic purpose of the subsection is to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement

of the case. This does not necessarily encompass undoing sales of property from the estate to a good faith purchaser. Where there is a question over the scope of the subsection, the court will make the appropriate orders to protect rights acquired in reliance on the bankruptcy case.

Legislative Statements. Section 349(b)(2) of the House amendment adds a cross reference to section 553 to reflect the new right of recovery of setoffs created under that section. Corresponding changes are made throughout the House amendment.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Library References:

C.J.S. Bankruptcy §§ 48, 299, 380, 418 et seq.

West's Key No. Digests, Bankruptcy Ⓒ2235, 3275, 3594, 3673, 3717, 3718(4).

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 350. Closing and reopening cases

(a) After an estate is fully administered and the court has discharged the trustee, the court shall close the case.

(b) A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2569; Pub.L. 98-353, Title III, § 439, July 10, 1984, 98 Stat. 370.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) requires the court to close a bankruptcy case after the estate is fully administered and the trustee discharged. The Rules of Bankruptcy Procedure will provide the procedure for case closing. Subsection (b) permits reopening of the case to administer assets, to accord relief to the debtor, or for other cause. Though the court may permit reopening of a case so that the trustee may exercise an avoiding power, laches may constitute a bar to an action that has been delayed too long. The case may be reopened in the court in which it was closed.

The rules will prescribe the procedure by which a case is reopened and how it will be conducted after reopening.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions.

For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of subsec. (b) of this section in chapter 9 cases, see section 901.

Scheduled property deemed abandoned, see section 554.

Successor trustee, see section 703.

Library References:

C.J.S. Bankruptcy § 351 et seq.

West's Key No. Digests, Bankruptcy ☞3441, 3444.10-3444.60.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

SUBCHAPTER IV—ADMINISTRATIVE POWERS

§ 361. Adequate protection

When adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by—

(1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property;

(2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or

(3) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2569; Pub.L. 98-353, Title III, § 440, July 10, 1984, 98 Stat. 370.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Sections 362, 363, and 364 require, in certain circumstances, that the court determine in noticed hearings whether the interest of a secured creditor or co-owner of property with the debtor is adequately protected in connection with the sale or use of property. The interests of which the court may provide protection in the ways described in this section include equitable as well as legal interests. For example, a right to enforce a pledge and a right to recover property delivered to a debtor under a consignment agreement or an agreement of sale or return are interests that may be entitled to protection. This section specifies means by which adequate protection may be provided but, to avoid placing the court in an administrative role, does not require the court to provide it. Instead, the trustee or debtor in possession or the creditor will provide or propose a protection method. If the party that is affected by the proposed action objects, the court will determine whether the protection provided is adequate. The purpose of this section is to illustrate means by which it may be provided and to define the limits of the concept.

The concept of adequate protection is derived from the fifth amendment protection of property interests as enunciated by the Supreme Court. See *Wright v. Union Central Life Ins. Co.*, 311 U.S. 273 (1940) [61 S.Ct. 196, 85 L.Ed. 184, rehearing denied 61 S.Ct. 445, 312 U.S. 711, 85 L.Ed. 1142]; *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555 (1935) [55 S.Ct. 854, 79 L.Ed. 1593].

The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor's assets prevents that.

Subsection (a) defines the scope of the automatic stay, by listing the acts that are stayed by the commencement of the case. The commencement or continuation, including the issuance of process, of a judicial, administrative or other proceeding against the debtor that was or could have been commenced before the commencement of the bankruptcy case is stayed under paragraph (1). The scope of this para-

graph is broad. All proceedings are stayed, including arbitration, administrative, and judicial proceedings. Proceeding in this sense encompasses civil actions and all proceedings even if they are not before governmental tribunals.

The stay is not permanent. There is adequate provision for relief from the stay elsewhere in the section. However, it is important that the trustee have an opportunity to inventory the debtor's position before proceeding with the administration of the case. Undoubtedly the court will lift the stay for proceedings before specialized or non-governmental tribunals to allow those proceedings to come to a conclusion. Any party desiring to enforce an order in such a proceeding would thereafter have to come before the bankruptcy court to collect assets. Nevertheless, it will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from many duties that may be handled elsewhere.

Paragraph (2) stays the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the bankruptcy case. Thus, execution and levy against the debtors' prepetition property are stayed, and attempts to collect a judgment from the debtor personally are stayed.

Paragraph (3) stays any act to obtain possession of property of the estate (that is, property of the debtor as of the date of the filing of the petition) or property from the estate (property over which the estate has control or possession). The purpose of this provision is to prevent dismemberment of the estate. Liquidation must proceed in an orderly fashion. Any distribution of property must be by the trustee after he has had an opportunity to familiarize himself with the various rights and interests involved and with the property available for distribution.

Paragraph (4) stays lien creation against property of the estate. Thus, taking possession to perfect a lien or obtaining court process is prohibited. To permit lien creation after bankruptcy would give certain creditors preferential treatment by making them secured instead of unsecured.

Paragraph (5) stays any act to create or enforce a lien against property of the debtor, that is, most property that is acquired after the date of the filing of the petition, property that is exempted, or property that does not pass to the estate, to the extent that the lien secures a prepetition claim. Again, to permit postbankruptcy lien creation or enforcement would permit certain creditors to receive preferential treatment. It may also circumvent the debtors' discharge.

Paragraph (6) prevents creditors from attempting in any way to collect a prepetition debt. Creditors in consumer cases occasionally telephone debtors to encourage repayment in spite of bankruptcy. Inexperienced, frightened, or ill-counseled debtors may succumb to suggestions to repay notwithstanding their bankruptcy. This provision prevents evasion of the purpose of the bankruptcy laws by sophisticated creditors.

Paragraph (7) stays setoffs of mutual debts and credits between the debtor and creditors. As with all other paragraphs of subsection (a), this paragraph does not affect the right of creditors. It simply stays its enforcement pending an orderly examination of the debtor's and creditors' rights.

Subsection (b) lists seven exceptions to the automatic stay. The effect of an exception is not to make the action immune from injunction.

The court has ample other powers to stay actions not covered by the automatic stay. Section 105, of proposed title 11, derived from Bankruptcy Act, § 2a(15), [former section 11(a)(15) of this title], grants the power to issue orders necessary or appropriate to carry out the provisions of title 11. The district court and the bankruptcy court as its adjunct have all the traditional injunctive powers of a court of equity, 28 U.S.C. §§ 151 and 164 as proposed in S. 2266, § 201, and 28 U.S.C. § 1334, as proposed in S. 2266, § 216. Stays or injunctions issued under these other sections will not be automatic upon the commencement of the case, but will be granted or issued under the usual rules for the issuance of injunctions. By excepting an act or action from the automatic stay, the bill simply requires that the trustee move the court into action, rather than requiring the stayed party to request relief from the stay. There are some actions, enumerated in the exceptions, that generally should not be stayed automatically upon the commencement of the case, for reasons of either policy or practicality. Thus,

the court will have to determine on a case-by-case basis whether a particular action which may be harming the estate should be stayed.

With respect to stays issued under other powers, or the application of the automatic stay, to governmental actions, this section and the other sections mentioned are intended to be an express waiver of sovereign immunity of the Federal Government, and an assertion of the bankruptcy power over State governments under the supremacy clause notwithstanding a State's sovereign immunity.

The first exception is of criminal proceedings against the debtor. The bankruptcy laws are not a haven for criminal offenders, but are designed to give relief from financial overextension. Thus, criminal actions and proceedings may proceed in spite of bankruptcy.

Paragraph (2) excepts from the stay the collection of alimony, maintenance or support from property that is not property of the estate. This will include property acquired after the commencement of the case, exempted property, and property that does not pass to the estate. The automatic stay is one means of protecting the debtor's discharge. Alimony, maintenance and support obligations are excepted from discharge. Staying collection of them, when not to the detriment of other creditors (because the collection effort is against property that is not property of the estate) does not further that goal. Moreover, it could lead to hardship on the part of the protected spouse or children.

Paragraph (3) excepts any act to perfect an interest in property to the extent that the trustee's rights and powers are limited under section 546(a) of the bankruptcy code. That section permits postpetition perfection of certain liens to be effective against the trustee. If the act of perfection, such as filing, were stayed, the section would be nullified.

Paragraph (4) excepts commencement or continuation of actions and proceedings by governmental units to enforce police or regulatory powers. Thus, where a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding is not stayed under the automatic stay.

Paragraph (5) makes clear that the exception extends to permit an injunction and enforcement of an injunction, and to permit the entry

of a money judgment, but does not extend to permit enforcement of a money judgment. Since the assets of the debtor are in the possession and control of the bankruptcy court, and since they constitute a fund out of which all creditors are entitled to share, enforcement by a governmental unit of a money judgment would give it preferential treatment to the detriment of all other creditors.

Paragraph (6) excepts the setoff of any mutual debt and claim for commodity transactions.

Paragraph (7) excepts actions by the Secretary of Housing and Urban Development to foreclose or take possession in a case of a loan insured under the National Housing Act [section 1701 et seq. of Title 12, Banks and Banking]. A general exception for such loans is found in current sections 263 [former section 663 of this title] and 517 [former section 917 of this title], the exception allowed by this paragraph is much more limited.

Subsection (c) of section 362 specifies the duration of the automatic stay. Paragraph (1) terminates a stay of an act against property of the estate when the property ceases to be property of the estate, such as by sale, abandonment, or exemption. It does not terminate the stay against property of the debtor if the property leaves the estate and goes to the debtor. Paragraph (2) terminates the stay of any other act on the earliest of the time the case is closed, the time the case is dismissed, or the time a discharge is granted or denied (unless the debtor is a corporation or partnership in a chapter 7 case).

Subsection (c) governs automatic termination of the stay. Subsections (d) through (g) govern termination of the stay by the court on the request of a party in interest.

Subsection (d) requires the court, upon motion of a party in interest, to grant relief from the stay for cause, such as by terminating, annulling, modifying, or conditioning the stay. The lack of adequate protection of an interest in property is one cause for relief, but is not the only cause. Other causes might include the lack of any connection with or interference with the pending bankruptcy case. Generally, proceedings in which the debtor is a fiduciary, or involving postpetition activities of the debtor, need not be stayed because they bear no relationship to the purpose of the automatic stay, which is protection of the debtor and his estate from his creditors.

Upon the court's finding that the debtor has no equity in the property subject to the stay and that the property is not necessary to an effective reorganization of the debtor, the subsection requires the court grant relief from the stay. To aid in this determination, guidelines are established where the property subject to the stay is real property. An exception to "the necessary to an effective reorganization" requirement is made for real property on which no business is being conducted other than operating the real property and activities incident thereto. The intent of this exception is to reach the single-asset apartment type cases which involve primarily tax-shelter investments and for which the bankruptcy laws have provided a too facile method to relay conditions, but not the operating shopping center and hotel cases where attempts at reorganization should be permitted. Property in which the debtor has equity but which is not necessary to an effective reorganization of the debtor should be sold under section 363. Hearings under this subsection are given calendar priority to ensure that court congestion will not unduly prejudice the rights of creditors who may be obviously entitled to relief from the operation of the automatic stay.

Subsection (e) provides protection that is not always available under present law. The subsection sets a time certain within which the bankruptcy court must rule on the adequacy of protection provided for the secured creditor's interest. If the court does not rule within 30 days from a request by motion for relief from the stay, the stay is automatically terminated with respect to the property in question. To accommodate more complex cases, the subsection permits the court to make a preliminary ruling after a preliminary hearing. After a preliminary hearing, the court may continue the stay only if there is a reasonable likelihood that the party opposing relief from the stay will prevail at the final hearing. Because the stay is essentially an injunction, the three stages of the stay may be analogized to the three stages of an injunction. The filing of the petition which gives rise to the automatic stay is similar to a temporary restraining order. The preliminary hearing is similar to the hearing on a preliminary injunction, and the final hearing and order are similar to the hearing and issuance or denial of a permanent injunction. The main difference lies in which party must bring the issue before the court. While in the injunction setting, the party seeking the injunction must prosecute the action, in proceeding for relief from the automatic stay, the

enjoined party must move. The difference does not, however, shift the burden of proof. Subsection (g) leaves that burden on the party opposing relief from the stay (that is, on the party seeking continuance of the injunction) on the issue of adequate protection and existence of an equity. It is not, however, intended to be confined strictly to the constitutional requirement. This section and the concept of adequate protection are based as much on policy grounds as on constitutional grounds. Secured creditors should not be deprived of the benefit of their bargain. There may be situations in bankruptcy where giving a secured creditor an absolute right to his bargain may be impossible or seriously detrimental to the policy of the bankruptcy laws. Thus, this section recognizes the availability of alternate means of protecting a secured creditor's interest where such steps are a necessary part of the rehabilitative process. Though the creditor might not be able to retain his lien upon the specific collateral held at the time of filing, the purpose of the section is to insure that the secured creditor receives the value for which he bargained.

The section specifies two exclusive means of providing adequate protection, both of which may require an approximate determination of the value of the protected entity's interest in the property involved. The section does not specify how value is to be determined, nor does it specify when it is to be determined. These matters are left to case-by-case interpretation and development. In light of the restrictive approach of the section to the availability of means of providing adequate protection, this flexibility is important to permit the courts to adapt to varying circumstances and changing modes of financing.

Neither is it expected that the courts will construe the term value to mean, in every case, forced sale liquidation value or full going concern value. There is wide latitude between those two extremes although forced sale liquidation value will be a minimum.

In any particular case, especially a reorganization case, the determination of which entity should be entitled to the difference between the going concern value and the liquidation value must be based on equitable considerations arising from the facts of the case. Finally, the determination of value is binding only for the purposes of the specific hearing and is not to have a *res judicata* effect.

The first method of adequate protection outlined is the making of cash payments to com-

pensate for the expected decrease in value of the opposing entity's interest. This provision is derived from *In re Bermec Corporation*, 445 F.2d 367 (2d Cir.1971), though in that case it is not clear whether the payments offered were adequate to compensate the secured creditors for their loss. The use of periodic payments may be appropriate where, for example, the property in question is depreciating at a relatively fixed rate. The periodic payments would be to compensate for the depreciation and might, but need not necessarily, be in the same amount as payments due on the secured obligation.

The second method is the fixing of an additional or replacement lien on other property of the debtor to the extent of the decrease in value or actual consumption of the property involved. The purpose of this method is to provide the protected entity with an alternative means of realizing the value of the original property, if it should decline during the case, by granting an interest in additional property from whose value the entity may realize its loss. This is consistent with the view expressed in *Wright v. Union Central Life Ins. Co.*, 311 U.S. 273 (1940) [61 S.Ct. 196, 85 L.Ed. 184, rehearing denied 61 S.Ct. 445, 312 U.S. 711, 85 L.Ed. 1142], where the Court suggested that it was the value of the secured creditor's collateral, and not necessarily his rights in specific collateral, that was entitled to protection.

The section makes no provision for the granting of an administrative priority as a method of providing adequate protection to an entity as was suggested in *In re Yale Express System, Inc.*, 384 F.2d 990 (2d Cir.1967), because such protection is too uncertain to be meaningful.

Notes of Committee on the Judiciary, House Report No. 95-595. The section specifies four means of providing adequate protection. They are neither exclusive nor exhaustive. They all rely, however, on the value of the protected entity's interest in the property involved. The section does not specify how value is to be determined, nor does it specify when it is to be determined. These matters are left to case-by-case interpretation and development. It is expected that the courts will apply the concept in light of facts of each case and general equitable principles. It is not intended that the courts will develop a hard and fast rule that will apply in every case. The time and method of valuation is not specified

precisely, in order to avoid that result. There are an infinite number of variations possible in dealings between debtors and creditors, the law is continually developing, and new ideas are continually being implemented in this field. The flexibility is important to permit the courts to adapt to varying circumstances and changing modes of financing.

Neither is it expected that the courts will construe the term value to mean, in every case, forced sale liquidation value or full going concern value. There is wide latitude between those two extremes. In any particular case, especially a reorganization case, the determination of which entity should be entitled to the difference between the going concern value and the liquidation value must be based on equitable considerations based on the facts of the case. It will frequently be based on negotiation between the parties. Only if they cannot agree will the court become involved.

The first method of adequate protection specified is periodic cash payments by the estate, to the extent of a decrease in value of the opposing entity's interest in the property involved. This provision is derived from *In re Yale Express, Inc.*, 384 F.2d 990 (2d Cir.1967) (though in that case it is not clear whether the payments required were adequate to compensate the secured creditors for their loss). The use of periodic payments may be appropriate, where for example, the property in question is depreciating at a relatively fixed rate. The periodic payments would be to compensate for the depreciation.

The second method is the provision of an additional or replacement lien on other property to the extent of the decrease in value of the property involved. The purpose of this method is to provide the protected entity with a means of realizing the value of the original property, if it should decline during the case, by granting an interest in additional property from whose value the entity may realize its loss.

The third method is the granting of an administrative expense priority to the protected entity to the extent of his loss. This method, more than the others, requires a prediction as to whether the unencumbered assets that will remain if the case is converted from reorganization to liquidation will be sufficient to pay the protected entity in full. It is clearly the most risky, from the entity's perspective, and should be used only when there is relative certainty that administrative expenses will be able to be paid in full in the event of liquidation.

The fourth method gives the parties and the courts flexibility by allowing such other relief as will result in the realization by the protected entity of the value of its interest in the property involved. Under this provision, the courts will be able to adapt to new methods of financing and to formulate protection that is appropriate to the circumstances of the case if none of the other methods would accomplish the desired result. For example, another form of adequate protection might be the guarantee by a third party outside the judicial process of compensation for any loss incurred in the case. Adequate protection might also, in some circumstances, be provided by permitting a secured creditor to bid in his claim at the sale of the property and to offset the claim against the price bid in.

The paragraph also defines, more clearly than the others, the general concept of adequate protection, by requiring such relief as will result in the realization of value. It is the general category, and as such, is defined by the concept involved rather than any particular method of adequate protection.

Legislative Statements. Section 361 of the House amendment represents a compromise between H.R. 8200 as passed by the House and the Senate amendment regarding the issue of "adequate protection" of a secured party. The House amendment deletes the provision found in section 361(3) of H.R. 8200 as passed by the House. It would have permitted adequate protection to be provided by giving the secured party an administrative expense regarding any decrease in the value of such party's collateral. In every case there is the uncertainty that the estate will have sufficient property to pay administrative expenses in full.

Section 361(4) of H.R. 8200 as passed by the House is modified in section 361(3) of the House amendment to indicate that the court may grant other forms of adequate protection, other than an administrative expense, which will result in the realization by the secured creditor of the indubitable equivalent of the creditor's interest in property. In the special instance where there is a reserve fund maintained under the security agreement, such as in the typical bondholder case, indubitable equivalent means that the bondholders would be entitled to be protected as to the reserve fund, in addition to the regular payments needed to service the debt. Adequate protection of an interest of an entity in property is intended to protect a creditor's allowed secured claim. To the extent the protection proves to be inad-

equate after the fact, the creditor is entitled to a first priority administrative expense under section 503(b).

In the special case of a creditor who has elected application of creditor making an election under section 1111(b)(2), that creditor is entitled to adequate protection of the creditor's interest in property to the extent of the value of the collateral not to the extent of the creditor's allowed secured claim, which is inflated to cover a deficiency as a result of such election.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Library References:

C.J.S. Bankruptcy §§ 86-88, 186, 200, 208, 209.

West's Key No. Digests, Bankruptcy ⇨2430(1)-2434, 3035.1, 3065, 3073.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a) of this section—

(A) of the commencement or continuation of an action or proceeding for—

(i) the establishment of paternity; or

(ii) the establishment or modification of an order for alimony, maintenance, or support; or

(B) of the collection of alimony, maintenance, or support from property that is not property of the estate;

(3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;

(6) under subsection (a) of this section, of the setoff by a commodity broker, forward contract merchant, stockbroker, financial institutions, or securities clearing agency of any mutual debt and claim under or in connection with commodity contracts, as defined in section 761 of this title, forward contracts, or securities contracts, as defined in section 741 of this title, that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, arising out of commodity contracts, forward contracts, or securities contracts against cash, securities, or other property held by or due from such commodity broker, forward contract merchant, stockbroker, financial institutions, or securities clearing agency to margin, guarantee, secure, or settle commodity contracts, forward contracts, or securities contracts;

(7) under subsection (a) of this section, of the setoff by a repo participant, of any mutual debt and claim under or in connection with repurchase agreements that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, arising out of repurchase agreements against cash, securities, or other property held by or due from

such repo participant to margin, guarantee, secure or settle repurchase agreements;

(8) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units;

(9) under subsection (a), of—

(A) an audit by a governmental unit to determine tax liability;

(B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;

(C) a demand for tax returns; or

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor).

(10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property;

(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;

(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under section 207 or title XI of the Merchant Marine Act, 1936, or under applicable State law;

(13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under section 207 or title XI of the Merchant Marine Act, 1936;

(14) ¹ under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;

(15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution;

(16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act;

(17) under subsection (a) of this section, of the setoff by a swap participant, of any mutual debt and claim under or in connection with any swap agreement that constitutes the setoff of a claim against the debtor for any payment due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant under or in connection with any swap agreement or against cash, securities, or other property of the debtor held by or due from such swap participant to guarantee, secure or settle any swap agreement; or

(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax imposed by the District of Columbia, or a political subdivision of a State, if such tax comes due after the filing of the petition.

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.

(c) Except as provided in subsections (d), (e), and (f) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; and

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, ^{for example} including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if— ^{own more than property is worth}

^{must prove by preponderance of the evidence} (A) the debtor does not have an equity in such property; and ^{on}

(B) such property is not necessary to an effective reorganization; or

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the

order for relief (or such later date as the court may determine for cause by order entered within that 90-day period)—

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien), which payments are in an amount equal to interest at a current fair market rate on the value of the creditor's interest in the real estate.

(e) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

(h) An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2570; Pub.L. 97-222, § 3, July 27, 1982, 96 Stat. 235; Pub.L. 98-353, Title III, §§ 304, 363(b), 392, 441, July 10, 1984, 98 Stat. 352, 363, 365, 371; Pub.L. 99-509, Title V, § 5001(a), Oct. 8, 1986, 100 Stat. 1911; Pub.L. 99-554, Title II, §§ 257(j), 283(d), Oct. 27, 1986, 100 Stat. 3115, 3116; Pub.L. 101-311, Title I, § 102, Title II, § 202, June 25, 1990, 104 Stat. 267, 269; Pub.L. 101-508, Title III, § 3007(a)(1), Nov. 5, 1990, 104 Stat. 1388-28; Pub.L. 103-394, Title I, §§ 101, 116, Title II, §§ 204(a), 218(b), Title III, § 304(b), Title IV, § 401, Title V, § 501(b), (d), October 22, 1994, 108 Stat. 4107, 4119, 4122, 4128, 4132, 4141, 4142, 4144; Pub.L. 105-277, Title VI, § 603, October 22, 1998.

1. See Codification note below.

Termination of Amendment

Pub.L. 101-508, § 3008, provided that amendment by Pub.L. 101-508, § 3007(a)(1), amending subsec. (b)(12) to (16) of this section, cease to be effective Oct. 1, 1996. See note below.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

The action commenced by the party seeking relief from the stay is referred to as a motion to make it clear that at the expedited hearing under subsection (e), and at hearings on relief from the stay, the only issue will be the lack of adequate protection, the debtor's equity in the property, and the necessity of the property to an effective reorganization of the debtor, or the existence of other cause for relief from the stay. This hearing will not be the appropriate time at which to bring in other issues, such as counterclaims against the creditor, which, although relevant to the question of the amount of the debt, concern largely collateral or unrelated matters. This approach is consistent with that taken in cases such as *In re Essex Properties, Ltd.*, 430 F.Supp. 1112 (N.D.Cal. 1977), that an action seeking relief from the stay is not the assertion of a claim which would give rise to the right or obligation to assert counterclaims. Those counterclaims are not to be handled in the summary fashion that the preliminary hearing under this provision will be. Rather, they will be the subject of more complete proceedings by the trustee to recover property of the estate or to object to the allowance of a claim. However, this would not preclude the party seeking continuance of the stay from presenting evidence on the existence of claims which the court may consider in exercising its discretion. What is precluded is a determination of such collateral claims on the merits at the hearing.

[For additional discussion, see Notes of the Committee on the Judiciary, Senate Report No. 95-989, set out under section 361 of this title.]

Notes of Committee on the Judiciary, House Report No. 95-595. Paragraph (7) [of subsec. (a)] stays setoffs of mutual debts and credits between the debtor and creditors. As with all other paragraphs of subsection (a), this paragraph does not affect the right of creditors. It simply stays its enforcement pending an orderly examination of the debtor's and creditors' rights.

Legislative Statements. Section 362(a)(1) of the House amendment adopts the provision contained in the Senate amendment enjoining the commencement or continuation of a judicial, administrative, or other proceeding to recover a claim against the debtor that arose before the commencement of the case. The provision is beneficial and interacts with section 362(a)(6), which also covers assessment, to prevent harassment of the debtor with respect to pre-petition claims.

Section 362(a)(7) contains a provision contained in H.R. 8200 as passed by the House. The differing provision in the Senate amendment was rejected. It is not possible that a debt owing to the debtor may be offset against an interest in the debtor.

Section 362(a)(8) is new. The provision stays the commencement or continuation of any proceeding concerning the debtor before the U.S. Tax Court.

Section 362(b)(4) indicates that the stay under section 362(a)(1) does not apply to affect the commencement or continuation of an action or proceeding by a governmental unit to enforce the governmental unit's police or regulatory power. This section is intended to be given a narrow construction in order to permit governmental units to pursue actions to protect the public health and safety and not to apply to actions by a governmental unit to protect a pecuniary interest in property of the debtor or property of the estate.

Section 362(b)(6) of the House amendment adopts a provision contained in the Senate

amendment restricting the exception to the automatic stay with respect to setoffs to permit only the setoff of mutual debts and claims. Traditionally, the right of setoff has been limited to mutual debts and claims and the lack of the clarifying term "mutual" in H.R. 8200 as passed by the House created an unintentional ambiguity. Section 362(b)(7) of the House amendment permits the issuance of a notice of tax deficiency. The House amendment rejects section 362(b)(7) in the Senate amendment. It would have permitted a particular governmental unit to obtain a pecuniary advantage without a hearing on the merits contrary to the exceptions contained in sections 362(b)(4) and (5).

Section 362(d) of the House amendment represents a compromise between comparable provisions in the House bill and Senate amendment. Under section 362(d)(1) of the House amendment, the court may terminate, annul, modify, or condition the automatic stay for cause, including lack of adequate protection of an interest in property of a secured party. It is anticipated that the Rules of Bankruptcy Procedure will provide that those hearings will receive priority on the calendar. Under section 362(d)(2) the court may alternatively terminate, annul, modify, or condition the automatic stay for cause including inadequate protection for the creditor. The court shall grant relief from the stay if there is no equity and it is not necessary to an effective reorganization of the debtor.

The latter requirement is contained in section 362(d)(2). This section is intended to solve the problem of real property mortgage foreclosures of property where the bankruptcy petition is filed on the eve of foreclosure. The section is not intended to apply if the business of the debtor is managing or leasing real property, such as a hotel operation, even though the debtor has no equity if the property is necessary to an effective reorganization of the debtor. Similarly, if the debtor does have an equity in the property, there is no requirement that the property be sold under section 363 of title 11 as would have been required by the Senate amendment.

Section 362(e) of the House amendment represents a modification of provisions in H.R. 8200 as passed by the House and the Senate amendment to make clear that a final hearing must be commenced within 30 days after a preliminary hearing is held to determine whether a creditor will be entitled to relief from the automatic stay. In order to insure

that those hearings will in fact occur within such 30-day period, it is anticipated that the rules of bankruptcy procedure provide that such final hearings receive priority on the court calendar.

Section 362(g) places the burden of proof on the issue of the debtor's equity in collateral on the party requesting relief from the automatic stay and the burden on other issues on the debtor.

An amendment has been made to section 362(b) to permit the Secretary of the Department of Housing and Urban Development to commence an action to foreclose a mortgage or deed of trust. The commencement of such an action is necessary for tax purposes. The section is not intended to permit the continuation of such an action after it is commenced nor is the section to be construed to entitle the Secretary to take possession in lieu of foreclosure.

Sections 362(b)(8) and (9) contained in the Senate amendment are largely deleted in the House amendment. Those provisions add to the list of actions not stayed (a) jeopardy assessments, (b) other assessments, and (c) the issuance of deficiency notices. In the House amendment, jeopardy assessments against property which ceases to be property of the estate is already authorized by section 362(c)(1). Other assessments are specifically stayed under section 362(a)(6), while the issuance of a deficiency notice is specifically permitted. Stay of the assessment and the permission to issue a statutory notice of a tax deficiency will permit the debtor to take his personal tax case to the Tax Court, if the bankruptcy judge authorizes him to do so (as explained more fully in the discussion of section 505.)

References in Text. The National Housing Act, referred to in subsec. (b)(8), is Act June 27, 1934, c. 847, 48 Stat. 1246, which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking.

Such Act, referred to in subsec. (b)(16), is the Higher Education Act of 1965, Pub.L. 89-329, as added and amended Pub.L. 99-498, Oct. 17, 1986, 100 Stat. 1278, which is classified principally to chapter 28 (section 1001 et seq.) of Title 20, Education. Section 435(j) of the Act is classified to section 1085(j) of Title 20.

Codification. Renumbering and conforming amendments by Pub.L. 101-647 failed to take into consideration prior renumbering and

conforming amendments by Pub.L. 101-311, thereby resulting in two pars. numbered "(14)". To accommodate such duplication, the renumbering reflects changes by Pub.L. 101-311 set out first, and Pub.L. 101-647 set out second, but do not reflect the minor conforming amendments.

1994 Act. The amendment to subsection (b)(2) specifies that the automatic stay does not apply to a proceeding that seeks only the establishment of paternity or the establishment or modification of an order for alimony, maintenance, and support.

The amendment to subsection (b)(3) confirms that certain actions taken during bankruptcy proceedings pursuant to the Uniform Commercial Code to maintain a secured creditor's position as it was at the commencement of the case do not violate the automatic stay. Such actions could include the filing of a continuation statement and the filing of a financing statement. The steps taken by a secured creditor to ensure continued perfection merely maintain the status quo and do not improve the position of the secured creditor.

A tax exception to the automatic stay is added to subsection (b)(9). This will lift the automatic stay as it applies to a tax audit, a demand for tax returns, assessment of an uncontested tax liability, or the making of certain assessments of tax and issuance of a notice and demand for payment for such assessment. The language of this provision is only intended to apply to sales or transfers to the debtor. It has no application to sales or transfers to third parties, such as in sales free and clear of tax liens under section 363(f).

The amendment adds subsection (b)(18), overruling several circuit court holdings that the automatic stay prevents local governments from attaching a statutory lien to property taxes accruing subsequent to a bankruptcy filing. See, e.g., *In re Paar Meadows*, 880 F.2d 1540 (2d Cir.1989), cert. denied, 110 S.Ct. 869 (1990); *Makaroff v. City of Lockport*, 916 F.2d 890 (3d Cir.1990). These decisions created a windfall for secured lenders, who would otherwise have been subordinated to such tax liens, and significantly impaired the revenue collecting capability of local governments. The amendment allows local governments to utilize their statutory property tax liens in order to secure the payment of property taxes.

Also, subsection (d) is amended to provide special circumstances under which creditors of a single asset real estate debtor may have the

stay lifted if the debtor has not filed a "feasible" reorganization plan within 90 days of filing, or has not commenced monthly payments to secured creditors.

Amended subsection (e) now provides that the final hearing on subsection (d) relief must conclude within 30 days of the preliminary hearing, unless extended by consent of the parties or for a specific time which the court finds is required by compelling circumstances. Under this standard, for example, an extension should not be available where the debtor was merely seeking to delay the bankruptcy process or had neglected to consummate a pending contract. Compelling circumstances that might justify an extension might include, for example, the bona fide illness of any party or the judge or the occurrence of an event beyond the parties' control. Such a finding must be balanced with the legitimate property rights at stake in each particular case.

Effective Date of 1994 Amendments.

Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective and Termination Dates of 1990 Amendment. Section 3007(a)(3) of Pub.L. 101-508 provided that: "The amendments made by this subsection [amending subsec. (b)(12) to (16) of this section and section 541(b)(1) to (3) of this title] shall be effective upon date of enactment of this Act [Nov. 5, 1990]."

Section 3008 of Pub.L. 101-508, which provided that amendments by subtitle A of Title III of Pub.L. 101-508 [amending this section, sections 541 and 1328 of this title, and sections 1078, 1078-1, 1078-7, 1085, 1088, and 1091 of Title 20, Education, and enacting provisions set out as notes under this section, and section 1328 of this title, and sections 1001, 1078-1, 1078-7, 1085, and 1088 of Title 20] shall cease to be effective on October 1, 1996, was repealed by Pub.L. 102-325, Title XV, § 1558, July 23, 1992, 106 Stat. 841.

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(j) not to apply with respect to cases commenced un-

der Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Section 5001(b) of Pub.L. 99-509 provided that: "The amendments made by subsection (a) of this section [amending this section] shall apply only to petitions filed under section 362 of title 11, United States Code, which are made after August 1, 1986."

Cross References

- Applicability of this section in chapter 9 cases, see section 901.
- Assessment of taxes against estate, see section 505.
- Effect of this section on subchapter III of chapter 7, see section 742.
- Enforcement of claims against debtor in chapter 9 cases, automatic stay of, see section 922.
- Extension of time generally, see section 108.
- Priorities, see section 507.
- Right of possession of party with security interest in
 - Aircraft equipment and vessels, see section 1110.
 - Rolling stock equipment, see section 1168.
- Setoff, see section 553.
- Turnover of property to estate, see section 542.

Library References:

- C.J.S. Bankruptcy § 65 et seq.
- West's Key No. Digests, Bankruptcy ⇨2391-2468.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 363. Use, sale, or lease of property

(a) In this section, "cash collateral" means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.

(2) If notification is required under subsection (a) of section 7A of the Clayton Act in the case of a transaction under this subsection, then—

(A) notwithstanding subsection (a) of such section, the notification required by such subsection to be given by the debtor shall be given by the trustee; and

(B) notwithstanding subsection (b) of such section, the required waiting period shall end on the 15th day after the date of the receipt, by the Federal Trade Commission and the Assistant Attorney General in charge of the

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

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Antitrust Division of the Department of Justice, of the notification required under such subsection (a), unless such waiting period is extended—

(i) pursuant to subsection (e)(2) of such section, in the same manner as such subsection (e)(2) applies to a cash tender offer;

(ii) pursuant to subsection (g)(2) of such section; or

(iii) by the court after notice and a hearing.

(c)(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

(3) Any hearing under paragraph (2)(B) of this subsection may be a preliminary hearing or may be consolidated with a hearing under subsection (e) of this section, but shall be scheduled in accordance with the needs of the debtor. If the hearing under paragraph (2)(B) of this subsection is a preliminary hearing, the court may authorize such use, sale, or lease only if there is a reasonable likelihood that the trustee will prevail at the final hearing under subsection (e) of this section. The court shall act promptly on any request for authorization under paragraph (2)(B) of this subsection.

(4) Except as provided in paragraph (2) of this subsection, the trustee shall segregate and account for any cash collateral in the trustee's possession, custody, or control.

(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section only to the extent not inconsistent with any relief granted under section 362(c), 362(d), 362(e), or 362(f) of this title.

(e) Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest. This subsection also applies to property that is subject to any unexpired lease of personal property (to the exclusion of such property being subject to an order to grant relief from the stay under section 362).

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

(g) Notwithstanding subsection (f) of this section, the trustee may sell property under subsection (b) or (c) of this section free and clear of any vested or contingent right in the nature of dower or curtesy.

(h) Notwithstanding subsection (f) of this section, the trustee may sell both the estate's interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if—

(1) partition in kind of such property among the estate and such co-owners is impracticable;

(2) sale of the estate's undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners;

(3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and

(4) such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

(i) Before the consummation of a sale of property to which subsection (g) or (h) of this section applies, or of property of the estate that was community property of the debtor and the debtor's spouse immediately before the commencement of the case, the debtor's spouse, or a co-owner of such property, as the case may be, may purchase such property at the price at which such sale is to be consummated.

(j) After a sale of property to which subsection (g) or (h) of this section applies, the trustee shall distribute to the debtor's spouse or the co-owners of such property, as the case may be, and to the estate, the proceeds of such sale, less the costs and expenses, not including any compensation of the trustee, of such sale, according to the interests of such spouse or co-owners, and of the estate.

(k) At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

(l) Subject to the provisions of section 365, the trustee may use, sell, or lease property under subsection (b) or (c) of this section, or a plan under chapter 11, 12, or 13 of this title may provide for the use, sale, or lease of property, notwithstanding any provision in a contract, a lease, or applicable law that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title concerning the debtor, or on the appointment of or the taking possession by a trustee in a case under this title or a custodian, and that effects,

or gives an option to effect, a forfeiture, modification, or termination of the debtor's interest in such property.

(m) The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

(n) The trustee may avoid a sale under this section if the sale price was controlled by an agreement among potential bidders at such sale, or may recover from a party to such agreement any amount by which the value of the property sold exceeds the price at which such sale was consummated, and may recover any costs, attorneys' fees, or expenses incurred in avoiding such sale or recovering such amount. In addition to any recovery under the preceding sentence, the court may grant judgment for punitive damages in favor of the estate and against any such party that entered into such an agreement in willful disregard of this subsection.

(o) In any hearing under this section—

(1) the trustee has the burden of proof on the issue of adequate protection; and

(2) the entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2572; Pub.L. 98-353, Title III, § 442, July 10, 1984, 98 Stat. 371; Pub.L. 99-554, Title II, § 257(k), Oct. 27, 1986, 100 Stat. 3115; Pub.L. 103-394, Title I, § 109, Title II, §§ 214(b), 219(c), Title V, § 501(d)(8), October 22, 1994, 108 Stat. 4113, 4126, 4129, 4144.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section defines the right and powers of the trustee with respect to the use, sale or lease of property and the rights of other parties that have interests in the property involved. It applies in both liquidation and reorganization cases.

Subsection (a) defines "cash collateral" as cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents in which the estate and an entity other than the estate have an interest, such as a lien or a co-ownership interest. The definition is not restricted to property of the estate that is cash collateral on the date of the filing of the petition. Thus, if "non-cash" collateral is disposed of and the proceeds come within the definition of "cash collateral" as set forth in this subsection, the proceeds would be cash collateral as long as they remain subject to the original lien on the "non-cash" collateral under section 552(b). To illustrate, rents re-

ceived from real property before or after the commencement of the case would be cash collateral to the extent that they are subject to a lien.

Subsection (b) permits the trustees to use, sell, or lease, other than in the ordinary course of business, property of the estate upon notice and opportunity for objections and hearing thereon.

Subsection (c) governs use, sale, or lease in the ordinary course of business. If the business of the debtor is authorized to be operated under § 721, 1108, or 1304 of the bankruptcy code [this title], then the trustee may use, sell, or lease property in the ordinary course of business or enter into ordinary course transactions without need for notice and hearing. This power is subject to several limitations. First, the court may restrict the trustee's powers in the order authorizing operation of the business. Second, with respect to cash collat-

eral, the trustee may not use, sell, or lease cash collateral except upon court authorization after notice and a hearing, or with the consent of each entity that has an interest in such cash collateral. The same preliminary hearing procedure in the automatic stay section applies to a hearing under this subsection. In addition, the trustee is required to segregate and account for any cash collateral in the trustee's possession, custody, or control.

Under subsections (d) and (e), the use, sale, or lease of property is further limited by the concept of adequate protection. Sale, use, or lease of property in which an entity other than the estate has an interest may be effected only to the extent not inconsistent with any relief from the stay granted to that interest's holder. Moreover, the court may prohibit or condition the use, sale, or lease as is necessary to provide adequate protection of that interest. Again, the trustee has the burden of proof on the issue of adequate protection. Subsection (e) also provides that where a sale of the property is proposed, an entity that has an interest in such property may bid at the sale thereof and set off against the purchase price up to the amount of such entity's claim. No prior valuation under section 506(a) would limit this bidding right, since the bid at the sale would be determinative of value.

Subsection (f) permits sale of property free and clear of any interest in the property of an entity other than the estate. The trustee may sell free and clear if applicable nonbankruptcy law permits it, if the other entity consents, if the interest is a lien and the sale price of the property is greater than the amount secured by the lien, if the interest is in bona fide dispute, or if the other entity could be compelled to accept a money satisfaction of the interest in a legal or equitable proceeding. Sale under this subsection is subject to the adequate protection requirement. Most often, adequate protection in connection with a sale free and clear of other interests will be to have those interests attach to the proceeds of the sale.

At a sale free and clear of other interests, any holder of any interest in the property being sold will be permitted to bid. If that holder is the high bidder, he will be permitted to offset the value of his interest against the purchase price of the property. Thus, in the most common situation, a holder of a lien on property being sold may bid at the sale and, if successful, may offset the amount owed to him that is secured by the lien on the property (but may not offset other amounts owed to him)

against the purchase price, and be liable to the trustee for the balance of the sale price, if any.

Subsection (g) permits the trustee to sell free and clear of any vested or contingent right in the nature of dower or curtesy.

Subsection (h) permits sale of a co-owner's interest in property in which the debtor had an undivided ownership interest such as a joint tenancy, a tenancy in common, or a tenancy by the entirety. Such a sale is permissible only if partition is impracticable, if sale of the estate's interest would realize significantly less for the estate than sale of the property free of the interests of the co-owners, and if the benefit to the estate of such a sale outweighs any detriment to the co-owners. This subsection does not apply to a co-owner's interest in a public utility when a disruption of the utilities services could result.

Subsection (i) provides protections for co-owners and spouses with dower, curtesy, or community property rights. It gives a right of first refusal to the co-owner or spouse at the price at which the sale is to be consummated. Subsection (j) requires the trustee to distribute to the spouse or co-owner the appropriate portion of the proceeds of the sale, less certain administrative expenses.

Subsection (k) permits the trustee to use, sell, or lease property notwithstanding certain bankruptcy or ipso facto clauses that terminate the debtor's interest in the property or that work a forfeiture or modification of that interest. This subsection is not as broad as the anti-ipso facto provision in proposed 11 U.S.C. 541(c)(1).

Subsection (l) protects good faith purchasers of property sold under this section from a reversal on appeal of the sale authorization, unless the authorization for the sale and the sale itself were stayed pending appeal. The purchaser's knowledge of the appeal is irrelevant to the issue of good faith.

Subsection (m) is directed at collusive bidding on property sold under this section. It permits the trustee to void a sale if the price of the sale was controlled by an agreement among potential bidders. The trustees may also recover the excess of the value of the property over the purchase price, and may recover any costs, attorney's fees, or expenses incurred in voiding the sale or recovering the difference. In addition, the court is authorized to grant judgment in favor of the estate and against the collusive bidder if the agreement controlling

the sale price was entered into in willful disregard of this subsection. The subsection does not specify the precise measure of damages, but simply provides for punitive damages, to be fixed in light of the circumstances.

Legislative Statements. Section 363(a) of the House amendment defines “cash collateral” as defined in the Senate amendment. The broader definition of “soft collateral” contained in H.R. 8200 as passed by the House is deleted to remove limitations that were placed on the use, lease, or sale of inventory, accounts, contract rights, general intangibles, and chattel paper by the trustee or debtor in possession.

Section 363(c)(2) of the House amendment is derived from the Senate amendment. Similarly, sections 363(c)(3) and (4) are derived from comparable provisions in the Senate amendment in lieu of the contrary procedure contained in section 363(c) as passed by the House. The policy of the House amendment will generally require the court to schedule a preliminary hearing in accordance with the needs of the debtor to authorize the trustee or debtor in possession to use, sell, or lease cash collateral. The trustee or debtor in possession may use, sell, or lease cash collateral in the ordinary course of business only “after notice and a hearing.”

Section 363(f) of the House amendment adopts an identical provision contained in the House bill, as opposed to an alternative provision contained in the Senate amendment.

Section 363(h) of the House amendment adopts a new paragraph (4) representing a compromise between the House bill and Senate amendment. The provision adds a limitation indicating that a trustee or debtor in possession sell jointly owned property only if the property is not used in the production, transmission, or distribution for sale, of electric energy or of natural or synthetic gas for heat, light, or power. This limitation is intended to protect public utilities from being deprived of power sources because of the bankruptcy of a joint owner.

Section 363(k) of the House amendment is derived from the third sentence of section 363(e) of the Senate amendment. The provision indicates that a secured creditor may bid in the full amount of the creditor’s allowed claim, including the secured portion and any unsecured portion thereof in the event the creditor is undersecured, with respect to property that is subject to a lien that secures the allowed claim of the sale of the property.

1994 Act. The initial waiting period for transactions in bankruptcy is extended to 15 days after the Department of Justice and the FTC receive the notification required under section 7A(a) of the Clayton Act (dealing with antitrust review of merger and acquisition transactions). The provision also clarifies that this waiting period can never be shortened, but only extended.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(k), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Continuity of business operation and use, acquisition or disposition of property by debtor, see section 303.

Identical rights and powers of debtor in chapter 13 cases, see section 1303.

Postpetition effect of security interest, see section 552.

Priorities, see section 507.

Right of possession of party with security interest in

Aircraft equipment and vessels, see section 1110.

Rolling stock equipment, see section 1168.

Rights and powers of debtor engaged in business, see section 1304.

Sale of property as affecting allowance of claim secured by lien on property of estate, see section 1111.

Sale of property subject to lien securing allowed claim, see section 1129.

Setoff, see section 553.

Turnover of property to estate, see section 542.

Library References:

C.J.S. Bankruptcy § 184 et seq.

West's Key No. Digests. Bankruptcy ⇨3061-3088.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 364. Obtaining credit

(a) If the trustee is authorized to operate the business of the debtor under section 721, 1108, 1203, 1204, or 1304 of this title, unless the court orders otherwise, the trustee may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under section 503(b)(1) of this title as an administrative expense.

(b) The court, after notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this section, allowable under section 503(b)(1) of this title as an administrative expense.

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

(d)(1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

(2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

(e) The reversal or modification on appeal of an authorization under this section to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not

such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

(f) Except with respect to an entity that is an underwriter as defined in section 1145(b) of this title, section 5 of the Securities Act of 1933, the Trust Indenture Act of 1939, and any State or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker or dealer in, a security does not apply to the offer or sale under this section of a security that is not an equity security.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2574; Pub.L. 99-554, Title II, § 257(l), Oct. 27, 1986, 100 Stat. 3115; Pub.L. 103-394, Title V, § 501(d)(9), October 22, 1994, 108 Stat. 4144.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section is derived from provisions in current law governing certificates of indebtedness, but is much broader. It governs all obtaining of credit and incurring of debt by the estate.

Subsection (a) authorizes the obtaining of unsecured credit and the incurring of unsecured debt in the ordinary course of business if the business of the debtor is authorized to be operated under section 721, 1108, or 1304. The debts so incurred are allowable as administrative expenses under section 503(b)(1). The court may limit the estate's ability to incur debt under this subsection.

Subsection (b) permits the court to authorize the trustee to obtain unsecured credit and incur unsecured debts other than in the ordinary course of business, such as in order to wind up a liquidation case, or to obtain a substantial loan in an operating case. Debt incurred under this subsection is allowable as an administrative expense under section 503(b)(1).

Subsection (c) is closer to the concept of certificates of indebtedness in current law. It authorizes the obtaining of credit and the incurring of debt with some special priority, if the trustee is unable to obtain unsecured credit under subsection (a) or (b). The various priorities are (1) with priority over any or all administrative expenses; (2) secured by a lien on unencumbered property of the estate; or (3) secured by a junior lien on encumbered property. The priorities granted under this subsection do not interfere with existing property rights.

Subsection (d) grants the court the authority to authorize the obtaining of credit and the incurring of debt with a superiority, that is a

lien on encumbered property that is senior or equal to the existing lien on the property. The court may authorize such a super-priority only if the trustee is otherwise unable to obtain credit, and if there is adequate protection of the original lien holder's interest. Again, the trustee has the burden of proof on the issue of adequate protection.

Subsection (e) provides the same protection for credit extenders pending an appeal of an authorization to incur debt as is provided under section 363(l) for purchasers: the credit is not affected on appeal by reversal of the authorization and the incurring of the debt were stayed pending appeal. The protection runs to a good faith lender, whether or not he knew of the pendency of the appeal.

A claim arising as a result of lending or borrowing under this section will be a priority claim, as defined in proposed section 507(a)(1), even if the claim is granted a super-priority over administrative expenses and is to be paid in advance of other first priority claims.

Legislative Statements. Section 364(f) of the House amendment is new. This provision continues the exemption found in section 3(a)(7) of the Securities Act of 1933 [section 77c(a)(7) of Title 15, Commerce and Trade] for certificates of indebtedness issued by a trustee in bankruptcy. The exemption applies to any debt security issued under section 364 of title 11. The section does not intend to change present law which exempts such securities from the Trust Indenture Act, 15 U.S.C. 77aaa, et seq. (1976) [section 77aaa et seq. of Title 15].

References in Text. Section 5 of the Securities Act of 1933, referred to in subsec. (f), is

classified to section 77e of Title 15, Commerce and Trade.

The Trust Indenture Act of 1939, referred to in subsec. (f), is Title III of Act May 27, 1933, c. 38, as added Aug. 3, 1939, c. 411, 43 Stat. 1149, which is classified to section 77aaa et seq. of Title 15.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Cross References

Applicability of subsecs. (c) to (f) of this section in chapter 9 cases, see section 901.
Priorities, see section 507.
Reversal on appeal of finding of jurisdiction as affecting validity of debt incurred, see section 921.
Rights and powers of debtor engaged in business, see section 1304

Library References:

C.J.S. Bankruptcy § 200.
West Key No. Digests, Bankruptcy ⇨ 3035.1-3038.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 365. Executory contracts and unexpired leases

(a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

(2) Paragraph (1) of this subsection does not apply to a default that is a breach of a provision relating to—

(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

(B) the commencement of a case under this title;

(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement; or

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(l), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Finance lease
at terms such as:
1) 1 pmt option
2) at end
of lease
3) risk of loss
shifted to
lessee

on assume
unexpired lease

know
want to
reject
(overmarketable)
may want to
request emergency
hearing to reject

True lease = FMV option

if considering to assume m
want to move for extens.
through Confirmation

material performance left on both sides

if assume must cure — default
pecuniary loss & assure
for future

assumable
t. agreement
commitment
Title 11

for Rejection Sec. 542(b)(6)

(D) the satisfaction of any penalty rate or provision relating to a default arising from any failure by the debtor to perform nonmonetary obligations under the executory contract or unexpired lease.

(3) For the purposes of paragraph (1) of this subsection and paragraph (2)(B) of subsection (f), adequate assurance of future performance of a lease of real property in a shopping center includes adequate assurance—

(A) of the source of rent and other consideration due under such lease, and in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of the debtor and its guarantors, if any, as of the time the debtor became the lessee under the lease;

(B) that any percentage rent due under such lease will not decline substantially;

(C) that assumption or assignment of such lease is subject to all the provisions thereof, including (but not limited to) provisions such as a radius, location, use, or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement relating to such shopping center; and

(D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such shopping center.

(4) Notwithstanding any other provision of this section, if there has been a default in an unexpired lease of the debtor, other than a default of a kind specified in paragraph (2) of this subsection, the trustee may not require a lessor to provide services or supplies incidental to such lease before assumption of such lease unless the lessor is compensated under the terms of such lease for any services and supplies provided under such lease before assumption of such lease.

(c) The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

(1)(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor in possession, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and

(B) such party does not consent to such assumption or assignment; or

(2) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor;

(3) such lease is of nonresidential real property and has been terminated under applicable nonbankruptcy law prior to the order for relief; or

(4) such lease is of nonresidential real property under which the debtor is the lessee of an aircraft terminal or aircraft gate at an airport at which the debtor is the lessee under one or more additional nonresidential leases of an aircraft terminal or aircraft gate and the trustee, in connection with such assumption or assignment, does not assume all such leases or does not assume and assign all of such leases to the same person, except that the

trustee may assume or assign less than all of such leases with the airport operator's written consent.

(d)(1) In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected. *personal property has 60 days until has to make pymt. & then has until*

(2) In a case under chapter 9, 11, 12, or 13 of this title, the trustee may assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor at any time before the confirmation of a plan but the court, on the request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease. *Confirm to dec whether reject*

(3) The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f) of this section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

(4) Notwithstanding paragraphs (1) and (2), in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.

(5) Notwithstanding paragraphs (1) and (4) of this subsection, in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is an affected air carrier that is the lessee of an aircraft terminal or aircraft gate before the occurrence of a termination event, then (unless the court orders the trustee to assume such unexpired leases within 5 days after the termination event), at the option of the airport operator, such lease is deemed rejected 5 days after the occurrence of a termination event and the trustee shall immediately surrender possession of the premises to the airport operator; except that the lease shall not be deemed to be rejected unless the airport operator first waives the right to damages related to the rejection. In the event that the lease is deemed to be rejected under this paragraph, the airport operator shall provide the affected air carrier adequate opportunity after the surrender of the premises to remove the fixtures and equipment installed by the affected air carrier.

(6) For the purpose of paragraph (5) of this subsection and paragraph (f)(1) of this section, the occurrence of a termination event means, with respect to a debtor which is an affected air carrier that is the lessee of an aircraft terminal or aircraft gate—

(A) the entry under section 301 or 302 of this title of an order for relief under chapter 7 of this title;

(B) the conversion of a case under any chapter of this title to a case under chapter 7 of this title; or

(C) the granting of relief from the stay provided under section 362(a) of this title with respect to aircraft, aircraft engines, propellers, appliances, or spare parts, as defined in section 40102(a) of title 49, except for property of the debtor found by the court not to be necessary to an effective reorganization.

(7) Any order entered by the court pursuant to paragraph (4) extending the period within which the trustee of an affected air carrier must assume or reject an unexpired lease of nonresidential real property shall be without prejudice to—

(A) the right of the trustee to seek further extensions within such additional time period granted by the court pursuant to paragraph (4); and

(B) the right of any lessor or any other party in interest to request, at any time, a shortening or termination of the period within which the trustee must assume or reject an unexpired lease of nonresidential real property.

(8) The burden of proof for establishing cause for an extension by an affected air carrier under paragraph (4) or the maintenance of a previously granted extension under paragraph (7)(A) and (B) shall at all times remain with the trustee.

(9) For purposes of determining cause under paragraph (7) with respect to an unexpired lease of nonresidential real property between the debtor that is an affected air carrier and an airport operator under which such debtor is the lessee of an airport terminal or an airport gate, the court shall consider, among other relevant factors, whether substantial harm will result to the airport operator or airline passengers as a result of the extension or the maintenance of a previously granted extension. In making the determination of substantial harm, the court shall consider, among other relevant factors, the level of actual use of the terminals or gates which are the subject of the lease, the public interest in actual use of such terminals or gates, the existence of competing demands for the use of such terminals or gates, the effect of the court's extension or termination of the period of time to assume or reject the lease on such debtor's ability to successfully reorganize under chapter 11 of this title, and whether the trustee of the affected air carrier is capable of continuing to comply with its obligations under section 365(d)(3) of this title.

(10) The trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), first arising from or after 60 days after the order for relief in a case under chapter 11 of this title under an unexpired lease of personal property (other than personal property leased to an individual primarily for personal, family, or household purposes), until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title, unless the court, after notice and a hearing and based on the equities of the case, orders otherwise with respect to the obligations or timely performance thereof. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f). Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

(e)(1) Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on—

(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

(B) the commencement of a case under this title; or

(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement.

(2) Paragraph (1) of this subsection does not apply to an executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

(A)(i) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to the trustee or to an assignee of such contract or lease, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and *sounds like (c)(1)*

(ii) such party does not consent to such assumption or assignment; or

(B) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor.

(f)(1) Except as provided in subsection (c) of this section, notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection; except that the trustee may not assign an unexpired lease of nonresidential real property under which the debtor is an affected air carrier that is the lessee of an aircraft terminal or aircraft gate if there has occurred a termination event.

(2) The trustee may assign an executory contract or unexpired lease of the debtor only if—

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

(3) Notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.

(g) Except as provided in subsections (h)(2) and (i)(2) of this section, the rejection of an executory contract or unexpired lease of the debtor constitutes a breach of such contract or lease—

(1) if such contract or lease has not been assumed under this section or under a plan confirmed under chapter 9, 11, 12, or 13 of this title, immediately before the date of the filing of the petition; or

(2) if such contract or lease has been assumed under this section or under a plan confirmed under chapter 9, 11, 12, or 13 of this title—

(A) if before such rejection the case has not been converted under section 1112, 1208, or 1307 of this title, at the time of such rejection; or

(B) if before such rejection the case has been converted under section 1112, 1208, or 1307 of this title—

(i) immediately before the date of such conversion, if such contract or lease was assumed before such conversion; or

(ii) at the time of such rejection, if such contract or lease was assumed after such conversion.

★ (h)(1)(A) If the trustee rejects an unexpired lease of real property under which the debtor is the lessor and—

IF Debtor is landlord

(i) if the rejection by the trustee amounts to such a breach as would entitle the lessee to treat such lease as terminated by virtue of its terms, applicable nonbankruptcy law, or any agreement made by the lessee, then the lessee under such lease may treat such lease as terminated by the rejection; or

(ii) if the term of such lease has commenced, the lessee may retain its rights under such lease (including rights such as those relating to the amount and timing of payment of rent and other amounts payable by the lessee and any right of use, possession, quiet enjoyment, subletting, assignment, or hypothecation) that are in or appurtenant to the real property for the balance of the term of such lease and for any renewal or extension of such rights to the extent that such rights are enforceable under applicable nonbankruptcy law.

(B) If the lessee retains its rights under subparagraph (A)(ii), the lessee may offset against the rent reserved under such lease for the balance of the term after the date of the rejection of such lease and for the term of any renewal or extension of such lease, the value of any damage caused by the nonperformance after the date of such rejection, of any obligation of the debtor under such lease, but the lessee shall not have any other right against the estate or the debtor on account of any damage occurring after such date caused by such nonperformance.

(C) The rejection of a lease of real property in a shopping center with respect to which the lessee elects to retain its rights under subparagraph (A)(ii) does not affect the enforceability under applicable nonbankruptcy law of any provision in the lease pertaining to radius, location, use, exclusivity, or tenant mix or balance.

(D) In this paragraph, "lessee" includes any successor, assign, or mortgagee permitted under the terms of such lease.

(2)(A) If the trustee rejects a timeshare interest under a timeshare plan under which the debtor is the timeshare interest seller and—

(i) if the rejection amounts to such a breach as would entitle the timeshare interest purchaser to treat the timeshare plan as terminated under its terms, applicable nonbankruptcy law, or any agreement made by timeshare interest purchaser, the timeshare interest purchaser under the timeshare plan may treat the timeshare plan as terminated by such rejection; or

(ii) if the term of such timeshare interest has commenced, then the timeshare interest purchaser may retain its rights in such timeshare interest for the balance of such term and for any term of renewal or extension of such timeshare interest to the extent that such rights are enforceable under applicable nonbankruptcy law.

(B) If the timeshare interest purchaser retains its rights under subparagraph (A), such timeshare interest purchaser may offset against the moneys due for such timeshare interest for the balance of the term after the date of the rejection of such timeshare interest, and the term of any renewal or extension of such timeshare interest, the value of any damage caused by the nonperformance after the date of such rejection, of any obligation of the debtor under such timeshare plan, but the timeshare interest purchaser shall not have any right against the estate or the debtor on account of any damage occurring after such date caused by such nonperformance.

(i)(1) If the trustee rejects an executory contract of the debtor for the sale of real property or for the sale of a timeshare interest under a timeshare plan, under which the purchaser is in possession, such purchaser may treat such contract as terminated, or, in the alternative, may remain in possession of such real property or timeshare interest.

(2) If such purchaser remains in possession—

(A) such purchaser shall continue to make all payments due under such contract, but may, offset against such payments any damages occurring after the date of the rejection of such contract caused by the nonperformance of any obligation of the debtor after such date, but such purchaser does not have any rights against the estate on account of any damages arising after such date from such rejection, other than such offset; and

(B) the trustee shall deliver title to such purchaser in accordance with the provisions of such contract, but is relieved of all other obligations to perform under such contract.

(j) A purchaser that treats an executory contract as terminated under subsection (i) of this section, or a party whose executory contract to purchase real property from the debtor is rejected and under which such party is not in possession, has a lien on the interest of the debtor in such property for the recovery of any portion of the purchase price that such purchaser or party has paid.

(k) Assignment by the trustee to an entity of a contract or lease assumed under this section relieves the trustee and the estate from any liability for any breach of such contract or lease occurring after such assignment.

(l) If an unexpired lease under which the debtor is the lessee is assigned pursuant to this section, the lessor of the property may require a deposit or other security for the performance of the debtor's obligations under the lease substantially the same as would have been required by the landlord upon the initial leasing to a similar tenant.

(m) For purposes of this section 365 and sections 541(b)(2) and 362(b)(10), leases of real property shall include any rental agreement to use real property.

(n)(1) If the trustee rejects an executory contract under which the debtor is a licensor of a right to intellectual property, the licensee under such contract may elect—

(A) to treat such contract as terminated by such rejection if such rejection by the trustee amounts to such a breach as would entitle the licensee to treat such contract as terminated by virtue of its own terms, applicable nonbankruptcy law, or an agreement made by the licensee with another entity; or

(B) to retain its rights (including a right to enforce any exclusivity provision of such contract, but excluding any other right under applicable nonbankruptcy law to specific performance of such contract) under such contract and under any agreement supplementary to such contract, to such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law), as such rights existed immediately before the case commenced, for—

(i) the duration of such contract; and

(ii) any period for which such contract may be extended by the licensee as of right under applicable nonbankruptcy law.

(2) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, under such contract—

(A) the trustee shall allow the licensee to exercise such rights;

(B) the licensee shall make all royalty payments due under such contract for the duration of such contract and for any period described in paragraph (1)(B) of this subsection for which the licensee extends such contract; and

(C) the licensee shall be deemed to waive—

(i) any right of setoff it may have with respect to such contract under this title or applicable nonbankruptcy law; and

(ii) any claim allowable under section 503(b) of this title arising from the performance of such contract.

(3) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, then on the written request of the licensee the trustee shall—

(A) to the extent provided in such contract, or any agreement supplementary to such contract, provide to the licensee any intellectual property (including such embodiment) held by the trustee; and

(B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment) including any right to obtain such intellectual property (or such embodiment) from another entity.

(4) Unless and until the trustee rejects such contract, on the written request of the licensee the trustee shall—

(A) to the extent provided in such contract or any agreement supplementary to such contract—

(i) perform such contract; or

(ii) provide to the licensee such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law) held by the trustee; and

(B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment), including any right to obtain such intellectual property (or such embodiment) from another entity.

(c) In a case under chapter 11 of this title, the trustee shall be deemed to have assumed (consistent with the debtor's other obligations under section 507), and shall immediately cure any deficit under, any commitment by the debtor to a Federal depository institutions regulatory agency (or predecessor to such agency) to maintain the capital of an insured depository institution, and any claim for a subsequent breach of the obligations thereunder shall be entitled to priority under section 507. This subsection shall not extend any commitment that would otherwise be terminated by any act of such an agency.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2574; Pub.L. 98-353, Title III, §§ 362, 402-404, July 10, 1984, 98 Stat. 361, 367; Pub.L. 99-554, Title II, §§ 257(j), (m), 283(e), Oct. 27, 1986, 100 Stat. 3115, 3117; Pub.L. 100-506, § 1(b), Oct. 18, 1988, 102 Stat. 2538; Pub.L. 101-647, Title XXV, § 2522(c), Nov. 29, 1990, 104 Stat. 4866; Pub.L. 102-365, § 19(b)-(e), Sept. 3, 1992, 106 Stat. 982-984; Pub.L. 103-394, Title II, §§ 205(a), 219, Title V, § 501(d)(10), October 22, 1994, 108 Stat. 4122, 4128, 4145; Pub.L. 103-429, § 1, Oct. 1, 1994, 108 Stat. 4377.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) of this section authorizes the trustee, subject to the court's approval, to assume or reject an executory contract or unexpired lease. Though there is no precise definition of what contracts are executory, it generally includes contracts on which performance remains due to some extent on both sides. A note is not usually an executory contract if the only performance that remains is repayment. Performance on one side of the contract would have been completed and the contract is no longer executory.

Because of the volatile nature of the commodities markets and the special provisions governing commodity broker liquidations in subchapter IV of chapter 7, the provisions governing distribution in section 765(a) will govern if any conflict between those provisions and the provisions of this section arise.

Subsections (b), (c) and (d) provide limitations on the trustee's powers. Subsection (b) requires the trustee to cure any default in the contract or lease and to provide adequate assurance of future performance if there has been a default, before he may assume. This provision does not apply to defaults under ipso facto or bankruptcy clauses, which is a significant departure from present law.

Subsection (b)(3) permits termination of leases entered into prior to the effective date of this title in liquidation cases if certain other conditions are met.

Subsection (b)(4) prohibits the trustee's assumption of an executory contract requiring the other party to make a loan or deliver equipment to or to issue a security of the debtor. The purpose of this subsection is to make it clear that a party to a transaction which is based upon the financial strength of a

debtor should not be required to extend new credit to the debtor whether in the form of loans, lease financing, or the purchase or discount of notes.

Subsection (b)(5) provides that in lease situations common to shopping centers, protections must be provided for the lessor if the trustee assumes the lease, including protection against decline in percentage rents, breach of agreements with other tenants, and preservation of the tenant mix. Protection for tenant mix will not be required in the office building situation.

Subsection (c) prohibits the trustee from assuming or assigning a contract or lease if applicable nonbankruptcy law excuses the other party from performance to someone other than the debtor, unless the other party consents. This prohibition applies only in the situation in which applicable law excuses the other party from performance independent of any restrictive language in the contract or lease itself.

Subsection (d) places time limits on assumption and rejection. In a liquidation case, the trustee must assume within 60 days (or within an additional 60 days, if the court, for cause, extends the time). If not assumed, the contract or lease is deemed rejected. In a rehabilitation case, the time limit is not fixed in the bill. However, if the other party to the contract or lease requests the court to fix a time, the court may specify a time within which the trustee must act. This provision will prevent parties in contractual or lease relationships with the debtor from being left in doubt concerning their status vis-a-vis the estate.

Subsection (e) invalidates ipso facto or bankruptcy clauses. These clauses, protected under present law, automatically terminate the contract or lease, or permit the other contracting party to terminate the contract or lease, in the event of bankruptcy. This frequently hampers rehabilitation efforts. If the trustee may assume or assign the contract under the limitations imposed by the remainder of the section, the contract or lease may be utilized to assist in the debtor's rehabilitation or liquidation.

The unenforcibility of ipso facto or bankruptcy clauses proposed under this section will require the courts to be sensitive to the rights of the nondebtor party to executory contracts and unexpired leases. If the trustee is to assume a contract or lease, the court will have to insure that the trustee's performance under the contract or lease gives the other contracting party the full benefit of his bargain.

This subsection does not limit the application of an ipso facto or bankruptcy clause if a new insolvency or receivership occurs after the bankruptcy case is closed. That is, the clause is not invalidated in toto, but merely made inapplicable during the case for the purposes of disposition of the executory contract or unexpired lease.

Subsection (f) partially invalidates restrictions on assignment of contracts or leases by the trustee to a third party. The subsection imposes two restrictions on the trustee: he must first assume the contract or lease, subject to all the restrictions on assumption found in the section, and adequate assurance of future performance must be provided to the other contracting party. Paragraph (3) of the subsection invalidates contractual provisions that permit termination or modification in the event of an assignment, as contrary to the policy of this subsection.

Subsection (g) defines the time as of which a rejection of an executory contract or unexpired lease constitutes a breach of the contract or lease. Generally, the breach is as of the date immediately preceding the date of the petition. The purpose is to treat rejection claims as prepetition claims. The remainder of the subsection specifies different times for cases that are converted from one chapter to another. The provisions of this subsection are not a substantive authorization to breach or reject an assumed contract. Rather, they prescribe the rules for the allowance of claims in case an assumed contract is breached, or if a case under chapter 11 in which a contract has been assumed is converted to a case under chapter 7 in which the contract is rejected.

Subsection (h) protects real property lessees of the debtor if the trustee rejects an unexpired lease under which the debtor is the lessor (or sublessor). The subsection permits the lessee to remain in possession of the leased property or to treat the lease as terminated by the rejection. The balance of the term of the lease referred to in paragraph (1) will include any renewal terms that are enforceable by the tenant, but not renewal terms if the landlord had an option to terminate. Thus, the tenant will not be deprived of his estate for the term for which he bargained. If the lessee remains in possession, he may offset the rent reserved under the lease against damages caused by the rejection, but does not have any affirmative rights against the estate for any damages after the rejection that result from the rejection.

Subsection (i) gives a purchaser of real property under a land installment sales contract similar protection. The purchaser, if the contract is rejected, may remain in possession or may treat the contract as terminated. If the purchaser remains in possession, he is required to continue to make the payments due, but may offset damages that occur after rejection. The trustee is required to deliver title, but is relieved of all other obligations to perform.

A purchaser that treats the contract as terminated is granted a lien on the property to the extent of the purchase price paid. A party with a contract to purchase land from the debtor has a lien on the property to secure the price already paid, if the contract is rejected and the purchaser is not yet in possession.

Subsection (k) relieves the trustee and the estate of liability for a breach of an assigned contract or lease that occurs after the assignment.

Legislative Statements. Section 365(b)(3) represents a compromise between H.R. 8200 as passed by the House and the Senate amendment. The provision adopts standards contained in section 365(b)(5) of the Senate amendment to define adequate assurance of future performance of a lease of real property in a shopping center.

Section 365(b)(4) of the House amendment indicates that after default the trustee may not require a lessor to supply services or materials without assumption unless the lessor is compensated as provided in the lease.

Section 365(c)(2) and (3) likewise represent a compromise between H.R. 8200 as passed by the House and the Senate amendment. Section 365(c)(2) is derived from section 365(b)(4) of the Senate amendment but does not apply to a contract to deliver equipment as provided in the Senate amendment. As contained in the House amendment, the provision prohibits a trustee or debtor in possession from assuming or assigning an executory contract of the debtor to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or the issuance of a security of the debtor.

Section 365(e) is a refinement of comparable provisions contained in the House bill and Senate amendment. Sections 365(e)(1) and (2)(A) restate section 365(e) of H.R. 8200 as passed by the House. Sections 365(e)(2)(B) expands the section to permit termination of an executory contract or unexpired lease of the debtor if such contract is a contract to make a loan, or

extend other debt financing or financial accommodations, to or for the benefit of the debtor, or for the issuance of a security of the debtor.

Characterization of contracts to make a loan, or extend other debt financing or financial accommodations, is limited to the extension of cash or a line of credit and is not intended to embrace ordinary leases or contracts to provide goods or services with payments to be made over time.

Section 365(f) is derived from H.R. 8200 as passed by the House. Deletion of language in section 365(f)(3) of the Senate amendment is done as a matter of style. Restrictions with respect to assignment of an executory contract or unexpired lease are superfluous since the debtor may assign an executory contract or unexpired lease of the debtor only if such contract is first assumed under section 364(f)(2)(A) of the House amendment.

Section 363(h) of the House amendment represents a modification of section 365(h) of the Senate amendment. The House amendment makes clear that in the case of a bankrupt lessor, a lessee may remain in possession for the balance of the term of a lease and any renewal or extension of the term only to the extent that such renewal or extension may be obtained by the lessee without the permission of the landlord or some third party under applicable non-bankruptcy law.

Codification. Amendment to subsec. (c)(1)(A) by Pub.L. 99-554, § 283(e)(1)(I), struck out "or an assignee" as the probable intent of Congress, notwithstanding language of amendment requiring "or and assignee" be struck out.

1994 Act. The amendment to subsection (d) specifies that 60 days after the order for relief the debtor must perform all obligations under an equipment lease, unless the court, after notice and a hearing and based on the equities of the case, orders otherwise. This will shift to the debtor the burden of bringing a motion while allowing the debtor sufficient breathing room after the bankruptcy petition to make an informed decision. Subsection (b) is clarified to provide that when sought by a debtor, a lease can be cured at a nondefault rate (i.e., it would not need to pay penalty rates).

The amendment also clarifies that lessees cannot have their rights stripped away if a debtor rejects its obligations as a lessor in bankruptcy. These rights include the amount

and timing of payment of rent or other amounts payable by the lessee, the right to use, possess, quiet enjoyment, sublet, or assign.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1992 Amendments. Section 19(f) of Pub.L. 102-365 provided that:

"The amendments made by this section [amending this section and enacting provisions set out as a note under this section] shall be in effect for the 12-month period that begins on the date of enactment of this Act [Sept. 3, 1992] and shall apply in all proceedings involving an affected air carrier (as defined in section 365(p) of title 11, United States Code, as amended by this section [subsec. (p) of this section]) that are pending during such 12-month period. Not later than 9 months after the date of enactment [Sept. 3, 1992], the Administrator of the Federal Aviation Administration shall report to the Committee on Commerce, Science, and Transportation and Committee on the Judiciary of the Senate and the Committee on the Judiciary and Committee on Public Works and Transportation of the House of Representatives on whether this section

shall apply to proceedings that are commenced after such 12-month period."

Effective Date of 1988 Amendments; Application of Amendments. Amendment by Pub.L. 100-506 effective Oct. 18, 1988, and not applicable to cases commenced before Oct. 18, 1988, see section 2 of Pub.L. 100-506, set out as a note under section 101 of this title.

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(j), (m), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Allowance of claims, see section 502.

Applicability of this section in chapter 9 cases, see section 901.

Assumption or rejection of certain executory contracts within reasonable time after order for relief, see section 744.

Collective bargaining agreements, see section 1167.

Effect of rejection of lease of railroad line, see section 1169.

Impairment of claims or interests by plans which cure certain defaults, see section 1124.

Provisions in plan for assumption or rejection of certain executory contracts or unexpired leases, see sections 1123 and 1322.

Right of possession of party with security interest as affected by default

Aircraft equipment and vessels, see section 1110.

Rolling stock equipment, see section 1168.

Setoff, see section 553.

Library References:

C.J.S. Bankruptcy §§ 108, 117, 216 et seq.

West's Key No. Digests, Bankruptcy Ⓒ3101-3117.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 366. Utility service

(a) Except as provided in subsection (b) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor

solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

(b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2578; Pub.L. 98-353, Title III, § 443, July 10, 1984, 98 Stat. 373.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section gives debtors protection from a cutoff of service by a utility because of the filing of a bankruptcy case. This section is intended to cover utilities that have some special position with respect to the debtor, such as an electric company, gas supplier, or telephone company that is a monopoly in the area so that the debtor cannot easily obtain comparable service from another utility. The utility may not alter, refuse, or discontinue service because of the nonpayment of a bill that would be discharged in the bankruptcy case. Subsection (b) protects the utility company by requiring the trustee or the debtor to provide, within ten days, adequate assurance of payment for service provided after the date of the petition.

Legislative Statements. Section 366 of the House amendment represents a compromise between comparable provisions contained

in H.R. 8200 as passed by the House and the Senate amendment. Subsection (a) is modified so that the applicable date is the date of the order for relief rather than the date of the filing of the petition. Subsection (b) contains a similar change but is otherwise derived from section 366(b) of the Senate amendment, with the exception that a time period for continued service of 20 days rather than 10 days is adopted.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions.

For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Library References:

C.J.S. Bankruptcy §§ 103, 104; Electricity §§ 25, 27; Gas § 19 et seq.; Telegraphs, Telephones, Radio, and Television § 258 et seq.
West's Key No. Digests, Bankruptcy ⅈ2481, 2482; Electricity ⅈ11(2); Gas ⅈ13(3); Telecommunications ⅈ266.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

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Historical and Revision Notes

Effective Date of 1984 Amendments. Items 557 to 559 added by Pub.L. 98-353. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

SUBCHAPTER I—CREDITORS AND CLAIMS

§ 501. Filing of proofs of claims or interests

(a) A creditor or an indenture trustee may file a proof of claim. An equity security holder may file a proof of interest.

(b) If a creditor does not timely file a proof of such creditor's claim, an entity that is liable to such creditor with the debtor, or that has secured such creditor, may file a proof of such claim.

(c) If a creditor does not timely file a proof of such creditor's claim, the debtor or the trustee may file a proof of such claim.

(d) A claim of a kind specified in section 502(e)(2), 502(f), 502(g), 502(h) or 502(i) of this title may be filed under subsection (a), (b), or (c) of this section the same as if such claim were a claim against the debtor and had arisen before the date of the filing of the petition.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2578; Pub.L. 98-353, Title III, § 444, July 10, 1984, 98 Stat. 373.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section governs the means by which creditors and equity security holders present their claims or interests to the court. Subsection (a) permits a creditor to file a proof of claim or interest. An indenture trustee representing creditors may file a proof of claim on behalf of the creditors he represents.

This subsection is permissive only, and does not require filing of a proof of claim by any creditor. It permits filing where some purpose would be served, such as where a claim that appears on a list filed under proposed 11 U.S.C. 924 or 1111 was incorrectly stated or listed as disputed, contingent, or unliquidated, where a creditor with a lien is undersecured and asserts a claim for the balance of the debt owed him (his unsecured claim, as determined under proposed 11 U.S.C. 506(a)), or in a liquidation case where there will be a distribution of assets to the holders of allowed claims. In other instances, such as in no-asset liquidation cases, in situations where a secured creditor does not assert any claim against the estate

and a determination of his claim is not made under proposed 11 U.S.C. 506, or in situations where the claim asserted would be subordinated and the creditor would not recover from the estate in any event, filing of a proof of claim may simply not be necessary. The Rules of Bankruptcy Procedure and practice under the law will guide creditors as to when filing is necessary and when it may be dispensed with. In general, however, unless a claim is listed in a chapter 9 or chapter 11 case and allowed as a result of the list, a proof of claim will be a prerequisite to allowance for unsecured claims, including priority claims and the unsecured portion of a claim asserted by the holder of a lien.

The Rules of Bankruptcy Procedure will set the time limits, the form, and the procedure for filing, which will determine whether claims are timely or tardily filed. The rules governing time limits for filing proofs of claims will continue to apply under section 405(d) of the bill. These provide a 6-month-bar date for the filing of tax claims.

Subsection (b) permits a codebtor, surety, or guarantor to file a proof of claim on behalf of the creditor to which he is liable if the creditor does not timely file a proof of claim.

In liquidation and individual repayment plan cases, the trustee or the debtor may file a proof of claim under subsection (c) if the creditor does not timely file. The purpose of this subsection is mainly to protect the debtor if the creditor's claim is nondischargeable. If the creditor does not file, there would be no distribution on the claim, and the debtor would have a greater debt to repay after the case is closed than if the claim were paid in part or in full in the case or under the plan.

Subsection (d) governs the filing of claims of the kind specified in subsections (f), (g), (h), (i), or (j) of proposed 11 U.S.C. 502. The separation of this provision from the other claim-filing provisions in this section is intended to indicate that claims of the kind specified, which do not become fixed or do not arise until after the commencement of the case, must be treated differently for filing purposes such as the bar date for filing claims. The rules will provide for later filing of claims of these kinds.

Subsection (e) gives governmental units (including tax authorities) at least six months following the date for the first meeting of creditors in a chapter 7 or chapter 13 case within which to file proof of claims.

Legislative Statements. The House amendment adopts section 501(b) of the Senate

amendment leaving the Rules of Bankruptcy Procedure free to determine where a proof of claim must be filed.

Section 501(c) expands language contained in section 501(c) of the House bill and Senate amendment to permit the debtor to file a proof of claim if a creditor does not timely file a proof of the creditor's claim in a case under title 11.

The House amendment deletes section 501(e) of the Senate amendment as a matter to be left to the rules of bankruptcy procedure. It is anticipated that the rules will enable governmental units, like other creditors, to have a reasonable time to file proofs of claim in bankruptcy cases.

For purposes of section 501, a proof of "interest" includes the interest of a general or limited partner in a partnership, the interest of a proprietor in a sole proprietorship, or the interest of a common or preferred stockholder in a corporation.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Binding effect of confirmation whether or not claim is filed or deemed filed, see section 944.

Discharge of

Debtor, see section 1141.

Liabilities on claims whether or not filed, see section 727.

Distribution of property of estate, see section 726.

Proof of claim deemed filed in

Chapter 9 cases, see section 925.

Chapter 11 cases, see section 1111.

Library References:

C.J.S. Bankruptcy § 268.

West's Key No. Digests, Bankruptcy Ⓒ2895.1, 2896.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 502. Allowance of claims or interests

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general

partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount except to the extent that—

(1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;

(2) such claim is for unmatured interest;

(3) if such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property;

(4) if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services;

(5) such claim is for a debt that is unmatured on the date of the filing of the petition and that is excepted from discharge under section 523(a)(5) of this title;

(6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds—

(A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of—

(i) the date of the filing of the petition; and

(ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus

(B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates;

(7) if such claim is the claim of an employee for damages resulting from the termination of an employment contract, such claim exceeds—

(A) the compensation provided by such contract, without acceleration, for one year following the earlier of—

(i) the date of the filing of the petition; or

(ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus

(B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates;

(8) such claim results from a reduction, due to late payment, in the amount of an otherwise applicable credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor; or

(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title

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or under the Federal Rules of Bankruptcy Procedure, except that a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide.

(c) There shall be estimated for purpose of allowance under this section—

(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(2) any right to payment arising from a right to an equitable remedy for breach of performance.

(d) Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

(e)(1) Notwithstanding subsections (a), (b), and (c) of this section and paragraph (2) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that—

(A) such creditor's claim against the estate is disallowed;

(B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution; or

(C) such entity asserts a right of subrogation to the rights of such creditor under section 509 of this title.

(2) A claim for reimbursement or contribution of such an entity that becomes fixed after the commencement of the case shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) of this section, the same as if such claim had become fixed before the date of the filing of the petition.

(f) In an involuntary case, a claim arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee and the order for relief shall be determined as of the date such claim arises, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(g) A claim arising from the rejection, under section 365 of this title or under a plan under chapter 9, 11, 12, or 13 of this title, of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(h) A claim arising from the recovery of property under section 522, 550, or 553 of this title shall be determined, and shall be allowed under subsection (a), (b),

or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(i) A claim that does not arise until after the commencement of the case for a tax entitled to priority under section 507(a)(8) of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(j) A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case. Reconsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a reconsidered claim is allowed and is of the same class as such holder's claim, such holder may not receive any additional payment or transfer from the estate on account of such holder's allowed claim until the holder of such reconsidered and allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder. This subsection does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2579; Pub.L. 98-353, Title III, § 445, July 10, 1984, 98 Stat. 373; Pub.L. 99-554, Title II, §§ 257(j), 283(f), Oct. 27, 1986, 100 Stat. 3115, 3117; Pub.L. 103-394, Title II, § 213(a), Title III, § 304(h), October 22, 1994, 108 Stat. 4125, 4134.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. A proof of claim or interest is prima facie evidence of the claim or interest. Thus, it is allowed under subsection (a) unless a party in interest objects. The rules and case law will determine who is a party in interest for purposes of objection to allowance. The case law is well developed on this subject today. As a result of the change in the liability of a general partner's estate for the debts of this partnership, see proposed 11 U.S.C. 723, the category of persons that are parties in interest in the partnership case will be expanded to include a creditor of a partner against whose estate the trustee of the partnership estate may proceed under proposed 11 U.S.C. 723(c).

Subsection (b) prescribes the grounds on which a claim may be disallowed. The court will apply these standards if there is an objection to a proof of claim. The burden of proof on the issue of allowance is left to the Rules of Bankruptcy Procedure. Under the current chapter XIII [former section 1001 et seq. of this title] rules, a creditor is required to prove that his claim is free from usury, rule 13-301. It is expected that the rules will make similar

provision for both liquidation and individual repayment plan cases. See Bankruptcy Act § 656(b) [former section 1056(b) of this title]; H.R. 31, 94th Cong., 1st sess., sec. 6-104(a) (1975).

Paragraph (1) requires disallowance if the claim is unenforceable against the debtor for any reason (such as usury, unconscionability, or failure of consideration) other than because it is contingent or unmatured. All such contingent or unmatured claims are to be liquidated by the bankruptcy court in order to afford the debtor complete bankruptcy relief; these claims are generally not provable under present law.

Paragraph (2) requires disallowance to the extent that the claim is for unmatured interest as of the date of the petition. Whether interest is matured or unmatured on the date of bankruptcy is to be determined without reference to any ipso facto or bankruptcy clause in the agreement creating the claim. Interest disallowed under this paragraph includes post-petition interest that is not yet due and payable, and any portion of prepaid interest that represents an original discounting of the claim,

yet that would not have been earned on the date of bankruptcy. For example, a claim on a \$1,000 note issued the day before bankruptcy would only be allowed to the extent of the cash actually advanced. If the original discount was 10 percent so that the cash advanced was only \$900, then notwithstanding the face amount of note, only \$900 would be allowed. If \$900 was advanced under the note some time before bankruptcy, the interest component of the note would have to be prorated and disallowed to the extent it was for interest after the commencement of the case.

Section 502(b) thus contains two principles of present law. First, interest stops accruing at the date of the filing of the petition, because any claim for unmatured interest is disallowed under this paragraph. Second, bankruptcy operates as the acceleration of the principal amount of all claims against the debtor. One unarticulated reason for this is that the discounting factor for claims after the commencement of the case is equivalent to contractual interest rate on the claim. Thus, this paragraph does not cause disallowance of claims that have not been discounted to a present value because of the irrebuttable presumption that the discounting rate and the contractual interest rate (even a zero interest rate) are equivalent.

Paragraph (3) requires disallowance of a claim to the extent that the creditor may offset the claim against a debt owing to the debtor. This will prevent double recovery, and permit the claim to be filed only for the balance due. This follows section 68 of the Bankruptcy Act [former section 108 of this title].

Paragraph (4) requires disallowance of a property tax claim to the extent that the tax due exceeds the value of the property. This too follows current law to the extent the property tax is ad valorem.

Paragraph (5) prevents overreaching by the debtor's attorneys and concealing of assets by debtors. It permits the court to examine the claim of a debtor's attorney independently of any other provision of this subsection, and to disallow it to the extent that it exceeds the reasonable value of the attorneys' services.

Postpetition alimony, maintenance or support claims are disallowed under paragraph (6). They are to be paid from the debtor's postpetition property, because the claims are nondischargeable.

Paragraph (7), derived from current law, limits the damages allowable to a landlord of

the debtor. The history of this provision is set out at length in *Oldden v. Tonto Realty Co.*, 143 F.2d 916 (2d Cir.1944). It is designed to compensate the landlord for his loss while not permitting a claim so large (based on a long-term lease) as to prevent other general unsecured creditors from recovering a dividend from the estate. The damages a landlord may assert from termination of a lease are limited to the rent reserved for the greater of one year or ten percent of the remaining lease term, not to exceed three years, after the earlier of the date of the filing of the petition and the date of surrender or repossession in a chapter 7 case and 3 years lease payments in a chapter 9, 11, or 13 case. The sliding scale formula for chapter 7 cases is new and designed to protect the long-term lessor. This subsection does not apply to limit administrative expense claims for use of the leased premises to which the landlord is otherwise entitled.

This paragraph will not overrule *Oldden*, or the proposition for which it has been read to stand: To the extent that a landlord has a security deposit in excess of the amount of his claim allowed under this paragraph, the excess comes into the estate. Moreover, his allowed claim is for his total damages, as limited by this paragraph. By virtue of proposed 11 U.S.C. 506(a) and 506(d), the claim will be divided into a secured portion and an unsecured portion in those cases in which the deposit that the landlord holds is less than his damages. As under *Oldden*, he will not be permitted to offset his actual damages against his security deposit and then claim for the balance under this paragraph. Rather, his security deposit will be applied in satisfaction of the claim that is allowed under this paragraph.

As used in section 502(b)(7), the phrase "lease of real property" applies only to a "true" or "bona fide" lease and does not apply to financing leases of real property or interests therein, or to leases of such property which are intended as security.

Historically, the limitation on allowable claims of lessors of real property was based on two considerations. First, the amount of the lessor's damages on breach of a real estate lease was considered contingent and difficult to prove. Partly for this reason, claims of a lessor of real estate were not provable prior to the 1934 amendments to the Bankruptcy Act. Second, in a true lease of real property, the lessor retains all risk and benefits as to the value of the real estate at the termination of

the lease. Historically, it was, therefore, considered equitable to limit the claims of a real estate lessor.

However, these considerations are not present in "lease financing" transactions where, in substance, the "lease" involves a sale of the real estate and the rental payments are in substance the payment of principal and interest on a secured loan or sale. In a financing lease the lessor is essentially a secured or unsecured creditor (depending upon whether his interest is perfected or not) of the debtor, and the lessor's claim should not be subject to the 502(b)(7) limitation. Financing "leases" are in substance installment sales or loans. The "lessors" are essentially sellers or lenders and should be treated as such for purposes of the bankruptcy law.

Whether a "lease" is true or bona fide lease or, in the alternative, a financing "lease" or a lease intended as security, depends upon the circumstances of each case. The distinction between a true lease and a financing transaction is based upon the economic substance of the transaction and not, for example, upon the locus of title, the form of the transaction or the fact that the transaction is denominated as a "lease". The fact that the lessee, upon compliance with the terms of the lease, becomes or has the option to become the owner of the leased property for no additional consideration or for nominal consideration indicates that the transaction is a financing lease or lease intended as security. In such cases, the lessor has no substantial interest in the leased property at the expiration of the lease term. In addition, the fact that the lessee assumes and discharges substantially all the risks and obligations ordinarily attributed to the outright ownership of the property is more indicative of a financing transaction than of a true lease. The rental payments in such cases are in substance payments of principal and interest either on a loan secured by the leased real property or on the purchase of the leased real property. See, e.g., Financial Accounting Standards Board Statement No. 13 and SEC Reg. S-X, 17 C.F.R. sec. 210.3-16(q) (1977); cf. *First National Bank of Chicago v. Irving Trust Co.*, 74 F.2d 263 (2nd Cir.1934); and Albenda and Lief, "Net Lease Financing Transactions Under the Proposed Bankruptcy Act of 1973," 30 *Business Lawyer*, 713 (1975).

Paragraph (8) is new. It tracks the landlord limitation on damages provision in paragraph (7) for damages resulting from the breach by the debtor of an employment contract, but

limits the recovery to the compensation reserved under an employment contract for the year following the earlier of the date of the petition and the termination of employment.

Subsection (c) requires the estimation of any claim liquidation of which would unduly delay the closing of the estate, such as a contingent claim, or any claim for which applicable law provides only an equitable remedy, such as specific performance. This subsection requires that all claims against the debtor be converted into dollar amounts.

Subsection (d) is derived from present law. It requires disallowance of a claim of a transferee of a voidable transfer in toto if the transferee has not paid the amount or turned over the property received as required under the sections under which the transferee's liability arises.

Subsection (e) also derived from present law, requires disallowance of the claim for reimbursement or contribution of a codebtor, surety or guarantor of an obligation of the debtor, unless the claim of the creditor on such obligation has been paid in full. The provision prevents competition between a creditor and his guarantor for the limited proceeds in the estate.

Subsection (f) specifies that "involuntary gap" creditors receive the same treatment as prepetition creditors. Under the allowance provisions of this subsection, knowledge of the commencement of the case will be irrelevant. The claim is to be allowed "the same as if such claim had arisen before the date of the filing of the petition." Under voluntary petition, proposed 11 U.S.C. 303(f), creditors must be permitted to deal with the debtor and be assured that their claims will be paid. For purposes of this subsection, "creditors" include governmental units holding claims for tax liabilities incurred during the period after the petition is filed and before the earlier of the order for relief or appointment of a trustee.

Subsection (g) gives entities injured by the rejection of an executory contract or unexpired lease, either under section 365 or under a plan or reorganization, a prepetition claim for any resulting damages, and requires that the injured entity be treated as a prepetition creditor with respect to that claim.

Subsection (h) gives a transferee of a setoff that is recovered by one trustee a prepetition claim for the amount recovered.

Subsection (i) answers the nonrecourse loan problem and gives the creditor an unsecured claim for the difference between the value of the collateral and the debt in response to the decision in *Great National Life Ins. Co. v. Pine Gate Associates, Ltd.*, Bankruptcy Case No. B75-4345A (N.D.Ga. Sept. 16, 1977).

The bill, as reported, deletes a provision in the bill as originally introduced (former sec. 502(i)) requiring a tax authority to file a proof of claim for recapture of an investment credit where, during title 11 proceedings, the trustee sells or otherwise disposes of property before the title 11 case began. The tax authority should not be required to submit a formal claim for a taxable event (a sale or other disposition of the asset) of whose occurrence the trustee necessarily knows better than the taxing authority. For procedural purposes, the recapture of investment credit is to be treated as an administrative expense, as to which only a request for payment is required.

Legislative Statements. The House amendment adopts a compromise position in section 502(a) between H.R. 8200, as passed by the House, and the Senate amendment. Section 502(a) has been modified to make clear that a party in interest includes a creditor of a partner in a partnership that is a debtor under chapter 7. Since the trustee of the partnership is given an absolute claim against the estate of each general partner under section 723(c), creditors of the partner must have standing to object to claims against the partnership at the partnership level because no opportunity will be afforded at the partner's level for such objection.

The House amendment contains a provision in section 502(b)(1) that requires disallowance of a claim to the extent that such claim is unenforceable against the debtor and unenforceable against property of the debtor. This is intended to result in the disallowance of any claim for deficiency by an undersecured creditor on a non-recourse loan or under a State antideficiency law, special provision for which is made in section 1111, since neither the debtor personally, nor the property of the debtor is liable for such a deficiency. Similarly claims for usurious interest or which could be barred by an agreement between the creditor and the debtor would be disallowed.

Section 502(b)(7)(A) represents a compromise between the House bill and the Senate amendment. The House amendment takes the provision in H.R. 8200 as passed by the House

of Representatives but increases the percentage from 10 to 15 percent.

As used in section 502(b)(7), the phrase "lease of real property" applies only to a "true" or "bona fide" lease and does not apply to financing leases of real property or interests therein, or to leases of such property which are intended as security.

The House amendment adopts section 502(b)(9) of the House bill which disallows any tax claim resulting from a reduction of the Federal Unemployment Tax Act [FUTA] credit (sec. 3302 of the Internal Revenue Code [section 3302 of Title 26, Internal Revenue Code]) on account of a tardy contribution to a State unemployment fund if the contribution is attributable to ways or other compensation paid by the debtor before bankruptcy. The Senate amendment allowed this reduction, but would have subordinated it to other claims in the distribution of the estate's assets by treating it as a punitive (nonpecuniary loss) penalty. The House amendment would also not bar reduction of the FUTA credit on account of a trustee's late payment of a contribution to a State unemployment fund if the contribution was attributable to a trustee's payment of compensation earned from the estate.

Section 502(c) of the House amendment presents a compromise between similar provisions contained in the House bill and the Senate amendment. The compromise language is consistent with an amendment to the definition of "claim" in section 104(4)(B) of the House amendment and requires estimation of any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment. To the extent language in the House and Senate reports indicate otherwise, such language is expressly overruled.

Section 502(e) of the House amendment contains language modifying a similar section in the House bill and Senate amendment. Section 502(e)(1) states the general rule requiring the court to disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on, or that has secured, the claim of a creditor to any extent that the creditor's claim against the estate is disallowed. This adopts a policy that a surety's claim for reimbursement or contribution is entitled to no better status than the claim of the creditor assured by such surety. Section 502(e)(1)(B) alternatively disallows any claim for reimbursement or contribution by a surety to the extent such claim is contingent as of the time of allowance. Section 502(e)(2) is clear

that to the extent a claim for reimbursement or contribution becomes fixed after the commencement of the case that it is to be considered a prepetition claim for purposes of allowance. The combined effect of sections 502(e)(1)(B) and 502(e)(2) is that a surety or codebtor is generally permitted a claim for reimbursement or contribution to the extent the surety or codebtor has paid the assured party at the time of allowance. Section 502(e)(1)(C) alternatively indicates that a claim for reimbursement or contribution of a surety or codebtor is disallowed to the extent the surety or codebtor requests subrogation under section 509 with respect to the rights of the assured party. Thus, the surety or codebtor has a choice; to the extent a claim for contribution or reimbursement would be advantageous, such as in the case where such a claim is secured, a surety or codebtor may opt for reimbursement or contribution under section 502(e). On the other hand, to the extent the claim for such surety or codebtor by way of subrogation is more advantageous, such as where such claim is secured, the surety may elect subrogation under section 509.

The section changes current law by making the election identical in all other respects. To the extent a creditor's claim is satisfied by a surety or codebtor, other creditors should not benefit by the surety's inability to file a claim against the estate merely because such surety or codebtor has failed to pay such creditor's claim in full. On the other hand, to the extent the creditor's claim against the estate is otherwise disallowed, the surety or codebtor should not be entitled to increased rights by way of reimbursement or contribution, to the detriment of competing claims of other unsecured creditors, than would be realized by way of subrogation.

While the foregoing scheme is equitable with respect to other unsecured creditors of the debtor, it is desirable to preserve present law to the extent that a surety or codebtor is not permitted to compete with the creditor he has assured until the assured party's claim has paid in full. Accordingly, section 509(c) of the House amendment subordinates both a claim by way of subrogation or a claim for reimbursement or contribution of a surety or codebtor to the claim of the assured party until the assured party's claim is paid in full.

Section 502(h) of the House amendment expands similar provisions contained in the House bill and the Senate amendment to indicate that any claim arising from the recovery

of property under section 522(i), 550, or 553 shall be determined as though it were a prepetition claim.

Section 502(i) of the House amendment adopts a provision contained in section 502(j) of H.R. 8200 as passed by the House but that was not contained in the Senate amendment.

Section 502(i) of H.R. 8200 as passed by the House, but was not included in the Senate amendment, is deleted as a matter to be left to the bankruptcy tax bill next year.

The House amendment deletes section 502(i) of the Senate bill but adopts the policy of that section to a limited extent for confirmation of a plan of reorganization in section 1111(b) of the House amendment.

Section 502(j) of the House amendment is new. The provision codifies section 57k of the Bankruptcy Act [former section 93(k) of this title].

Codification. Amendments by Pub.L. 98-353 § 445(b)(5) to (7) were executed to pars. (3), (5), and (7) as redesignated by par. (4) of section 445(b) as the probable intent of Congress although the directory language specified that the amendment be to pars. (3), (5), and (7) "as redesignated by paragraph (5)".

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(j) not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Pro-

visions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Acceptance of plan by holders of claims or interests, see section 1126.
Applicability of this section in chapter 9 cases, see section 901.
Binding effect of confirmation whether or not claim is allowed, see section 944.
Certain claims for which partner and partnership are liable, allowance of, see section 723.
Claim defined, see section 101.
Claims secured by lien on property of estate, allowance of, see section 1111.
Creditor as meaning entity having certain claims specified in this section, see section 101.
Deductibility of allowed claim, see section 346.
Discharge of liabilities on claims, see section 727.
Effect of confirmation, see section 1141.
Filing and allowance of postpetition claims, see section 1305.
Liability of exempted property for debtor's debt, see section 522.
Setoff, see section 553.
Trustee as lien creditor and as successor to certain creditors and purchasers, see section 544.

Library References:

C.J.S. Bankruptcy §§ 232 et seq., 351, 354.
West's Key No. Digests, Bankruptcy C=2821-2933.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 503. Allowance of administrative expenses

(a) An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—

(1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case;

(B) any tax—

(i) incurred by the estate, except a tax of a kind specified in section 507(a)(8) of this title; or

(ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case; and

(C) any fine, penalty, or reduction in credit relating to a tax of a kind specified in subparagraph (B) of this paragraph;

(2) compensation and reimbursement awarded under section 330(a) of this title;

(3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by—

(A) a creditor that files a petition under section 303 of this title;

(B) a creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor;

(C) a creditor in connection with the prosecution of a criminal offense relating to the case or to the business or property of the debtor;

(D) a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in making a substantial contribution in a case under chapter 9 or 11 of this title;

(E) a custodian superseded under section 543 of this title, and compensation for the services of such custodian; or

(F) a member of a committee appointed under section 1102 of this title, if such expenses are incurred in the performance of the duties of such committee;

(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant;

(5) reasonable compensation for services rendered by an indenture trustee in making a substantial contribution in a case under chapter 9 or 11 of this title, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title; and

(6) the fees and mileage payable under chapter 119 of title 28.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2581; Pub.L. 98-353, Title III, § 446, July 10, 1984, 98 Stat. 374; Pub.L. 99-554, Title II, § 283(g), Oct. 27, 1986, 100 Stat. 3117; Pub.L. 103-394, Title I, § 110, Title II, § 213(c), Title III, § 304(h), October 22, 1994, 108 Stat. 4113, 4126, 4134.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) of this section permits administrative expense claimants to file with the court a request for payment of an administrative expense. The Rules of Bankruptcy Procedure will specify the time, the form, and the method of such a filing.

Subsection (b) specifies the kinds of administrative expenses that are allowable in a case under the bankruptcy code [this title]. The subsection is derived mainly from section 64a(1) of the Bankruptcy Act [former section 104(a)(1) of this title], with some changes. The actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the order for relief, and any taxes on, measured by, or withheld from such wages, sala-

ries, or commissions, are allowable as administrative expenses.

In general, administrative expenses include taxes which the trustee incurs in administering the debtor's estate, including taxes on capital gains from sales of property by the trustee and taxes on income earned by the estate during the case. Interest on tax liabilities and certain tax penalties incurred by the trustee are also included in this first priority.

Taxes which the Internal Revenue Service may find due after giving the trustee a so-called "quickie" tax refund and later doing an audit of the refund are also payable as administrative expenses. The tax code [Title 26, Internal Revenue Code] permits the trustee of an estate which suffers a net operating loss to carry back the loss against an earlier profit year of the estate or of the debtor and to

obtain a tentative refund for the earlier year, subject, however, to a later full audit of the loss which led to the refund. The bill, in effect, requires the Internal Revenue Service to issue a tentative refund to the trustee (whether the refund was applied for by the debtor or by the trustee), but if the refund later proves to have been erroneous in amount, the Service can request that the tax attributable to the erroneous refund be payable by the estate as an administrative expense.

Postpetition payments to an individual debtor for services rendered to the estate are administrative expenses, and are not property of the estate when received by the debtor. This situation would most likely arise when the individual was a sole proprietor and was employed by the estate to run the business after the commencement of the case. An individual debtor in possession would be so employed, for example. See *Local Loan v. Hunt*, 292 U.S. 234, 243 (1933) [54 S.Ct. 695, 78 L.Ed. 1230].

Compensation and reimbursement awarded officers of the estate under section 330 are allowable as administrative expenses. Actual, necessary expenses, other than compensation of a professional person, incurred by a creditor that files an involuntary petition, by a creditor that recovers property for the benefit of the estate, by a creditor that acts in connection with the prosecution of a criminal offense relating to the case, by a creditor, indenture, trustee, equity security holder, or committee of creditors or equity security holders (other than official committees) that makes a substantial contribution to a reorganization or municipal debt adjustment case, or by a superseded custodian, are all allowable administrative expenses. The phrase "substantial contribution in the case" is derived from Bankruptcy Act §§ 242 and 243 [former sections 642 and 643 of this title]. It does not require a contribution that leads to confirmation of a plan, for in many cases, it will be a substantial contribution if the person involved uncovers facts that would lead to a denial of confirmation, such as fraud in connection with the case.

Paragraph (4) permits reasonable compensation for professional services rendered by an attorney or an accountant of an equity whose expense is compensable under the previous paragraph. Paragraph (5) permits reasonable compensation for an indenture trustee in making a substantial contribution in a reorganization or municipal debt adjustment case. Finally, paragraph (6) permits witness fees and mileage as prescribed under chapter 119 of

title 28 [section 1821 et seq. of Title 28, Judiciary and Judicial Procedure].

Legislative Statements. Section 503(a) of the House amendment represents a compromise between similar provisions in the House bill and the Senate amendment by leaving to the Rules of Bankruptcy Procedure the determination of the location at which a request for payment of an administrative expense may be filed. The preamble to section 503(b) of the House bill makes a similar change with respect to the allowance of administrative expenses.

Section 503(b)(1) adopts the approach taken in the House bill as modified by some provisions contained in the Senate amendment. The preamble to section 503(b) makes clear that none of the paragraphs of section 503(b) apply to claims or expenses of the kind specified in section 502(f) that arise in the ordinary course of the debtor's business or financial affairs and that arise during the gap between the commencement of an involuntary case and the appointment of a trustee or the order for relief, whichever first occurs. The remainder of section 503(b) represents a compromise between H.R. 8200 as passed by the House and the Senate amendments. Section 503(b)(3)(E) codifies present law in cases such as *Randolph v. Scruggs*, 190 U.S. 533, which accords administrative expense status to services rendered by a prepetition custodian or other party to the extent such services actually benefit the estate. Section 503(b)(4) of the House amendment conforms to the provision contained in H.R. 8200 as passed by the House and deletes language contained in the Senate amendment providing a different standard of compensation under section 330 of that amendment.

1994 Act. Subsection (b) is amended to specifically permit members of chapter 11 committees to receive court-approved reimbursement of their actual and necessary out-of-pocket expenses. The new provision does not allow the payment of compensation for services rendered by or to the committee members.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set

out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Adequate protection, other than granting certain administrative expenses, see section 361.
 Applicability of this section in chapter 9 cases, see section 901.
 Compensation of officers, see section 330.
 Deductibility of allowed expense, see section 346.
 Effect of conversion, see section 348.
 Unsecured debt as administrative expense or having priority over certain administrative expenses, see section 364.

Library References:

C.J.S. Bankruptcy §§ 232 et seq., 354.
 West's Key No. Digests, Bankruptcy Ⓒ2871-2879.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 504. Sharing of compensation

(a) Except as provided in subsection (b) of this section, a person receiving compensation or reimbursement under section 503(b)(2) or 503(b)(4) of this title may not share or agree to share—

- (1) any such compensation or reimbursement with another person; or
- (2) any compensation or reimbursement received by another person under such sections.

(b)(1) A member, partner, or regular associate in a professional association, corporation, or partnership may share compensation or reimbursement received under section 503(b)(2) or 503(b)(4) of this title with another member, partner, or regular associate in such association, corporation, or partnership, and may share in any compensation or reimbursement received under such sections by another member, partner, or regular associate in such association, corporation, or partnership.

(2) An attorney for a creditor that files a petition under section 303 of this title may share compensation and reimbursement received under section 503(b)(4) of this title with any other attorney contributing to the services rendered or expenses incurred by such creditor's attorney.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2582.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 504 prohibits the sharing of compensation, or fee splitting, among attorneys, other professionals, or trustees. The section provides only two excep-

tions: partners or associates in the same professional association, partnership, or corporation may share compensation inter se; and attorneys for petitioning creditors that join in

a petition commencing an involuntary case may share compensation.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Library References:

C.J.S. Attorney and Client § 174; Contracts §§ 223, 232.

West's Key No. Digests, Attorney and Client Ⓒ151; Contracts Ⓒ129(1).

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 505. Determination of tax liability

(a)(1) Except as provided in paragraph (2) of this subsection, the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

(2) The court may not so determine—

(A) the amount or legality of a tax, fine, penalty, or addition to tax if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this title; or

(B) any right of the estate to a tax refund, before the earlier of—

(i) 120 days after the trustee properly requests such refund from the governmental unit from which such refund is claimed; or

(ii) a determination by such governmental unit of such request.

(b) A trustee may request a determination of any unpaid liability of the estate for any tax incurred during the administration of the case by submitting a tax return for such tax and a request for such a determination to the governmental unit charged with responsibility for collection or determination of such tax. Unless such return is fraudulent, or contains a material misrepresentation, the trustee, the debtor, and any successor to the debtor are discharged from any liability for such tax—

(1) upon payment of the tax shown on such return, if—

(A) such governmental unit does not notify the trustee, within 60 days after such request, that such return has been selected for examination; or

(B) such governmental unit does not complete such an examination and notify the trustee of any tax due, within 180 days after such request or within such additional time as the court, for cause, permits;

(2) upon payment of the tax determined by the court, after notice and a hearing, after completion by such governmental unit of such examination; or

(3) upon payment of the tax determined by such governmental unit to be due.

(c) Notwithstanding section 362 of this title, after determination by the court of a tax under this section, the governmental unit charged with responsibility for collection of such tax may assess such tax against the estate, the debtor, or a successor to the debtor, as the case may be, subject to any otherwise applicable law.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2582; Pub.L. 98-353, Title III, § 447, July 10, 1984, 98 Stat. 374.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsections (a) and (b) are derived, with only stylistic changes, from section 2a(2A) of the Bankruptcy Act [former section 11(a)(2A) of this title]. They permit determination by the bankruptcy court of any unpaid tax liability of the debtor that has not been contested before or adjudicated by a judicial or administrative tribunal of competent jurisdiction before the bankruptcy case, and the prosecution by the trustee of an appeal from an order of such a body if the time for review or appeal has not expired before the commencement of the bankruptcy case. As under current Bankruptcy Act § 2a(2A), *Arkansas Corporation Commissioner v. Thompson*, 313 U.S. 132 (1941) [61 S.Ct. 888, 85 L.Ed. 1244], remains good law to permit abstention where uniformity of assessment is of significant importance.

Section (c) deals with procedures for obtaining a prompt audit of tax returns filed by the trustee in a liquidation or reorganization case. Under the bill as originally introduced, a trustee who is "in doubt" concerning tax liabilities of the estate incurred during a title 11 proceeding could obtain a discharge from personal liability for himself and the debtor (but not for the debtor or the debtor's successor in a reorganization), provided that certain administrative procedures were followed. The trustee could request a prompt tax audit by the local, State, or Federal governmental unit. The taxing authority would have to notify the trustee and the court within sixty days whether it accepted the return or desired to audit the returns more fully. If an audit were conducted, the tax office would have to notify the trustee of any tax deficiency within 4 months (subject to an extension of time if the court approved). These procedures would apply only to tax years completed on or before the case was closed and for which the trustee had filed a tax return.

The committee bill eliminates the "in doubt" rule and makes mandatory (rather than op-

tional) the trustee's request for a prompt audit of the estate's tax returns. In many cases, the trustee could not be certain that his returns raised no doubt about possible tax issues. In addition, it is desirable not to create a situation where the taxing authority asserts a tax liability against the debtor (as transferee of surplus assets, if any, return to him) after the case is over; in any such situation, the debtor would be called on to defend a tax return which he did not prepare. Under the amendment, all disputes concerning these returns are to be resolved by the bankruptcy court, and both the trustee and the debtor himself do not then face potential post-bankruptcy tax liabilities based on these returns. This result would occur as to the debtor, however, only in a liquidation case.

In a reorganization in which the debtor or a successor to the debtor continues in existence, the trustee could obtain a discharge from personal liability through the prompt audit procedure, but the Treasury could still claim a deficiency against the debtor (or his successor) for additional taxes due on returns filed during the title 11 proceedings.

Legislative Statements. Section 505 of the House amendment adopts a compromise position with respect to the determination of tax liability from the position taken in H.R. 8200 as passed by the House and in the Senate amendment.

Authority of bankruptcy court to rule on merits of tax claims. The House amendment authorizes the bankruptcy court to rule on the merits of any tax claim involving an unpaid tax, fine, or penalty relating to a tax, or any addition to a tax, of the debtor or the estate. This authority applies, in general, whether or not the tax, penalty, fine, or addition to tax had been previously assessed or paid. However, the bankruptcy court will not have jurisdiction to rule on the merits of any tax claim which has been previously adjudicat-

ed, in a contested proceeding, before a court of competent jurisdiction. For this purpose, a proceeding in the U.S. Tax Court is to be considered "contested" if the debtor filed a petition in the Tax Court by the commencement of the case and the Internal Revenue Service had filed an answer to the petition. Therefore, if a petition and answer were filed in the Tax Court before the title II petition was filed, and if the debtor later defaults in the Tax Court, then, under *res judicata* principles, the bankruptcy court could not then rule on the debtor's or the estate's liability for the same taxes.

The House amendment adopts the rule of the Senate bill that the bankruptcy court can, under certain conditions, determine the amount of tax refund claimed by the trustee. Under the House amendment, if the refund results from an offset or counterclaim to a claim or request for payment by the Internal Revenue Service, or other tax authority, the trustee would not first have to file an administrative claim for refund with the tax authority.

However, if the trustee requests a refund in other situations, he would first have to submit an administrative claim for the refund. Under the House amendment, if the Internal Revenue Service or other tax authority does not rule on the refund claim within 120 days, then the bankruptcy court may rule on the merits of the refund claim.

Under the Internal Revenue Code [Title 26, Internal Revenue Code], a suit for refund of Federal taxes cannot be filed until 6 months after a claim for refund is filed with the Internal Revenue Service (sec. 6532(a) [section 6532(a) of Title 26]). Because of the bankruptcy aim to close the estate as expeditiously as possible, the House amendment shortens to 120 days the period for the Internal Revenue Service to decide the refund claim.

The House amendment also adopts the substance of the Senate bill rule permitting the bankruptcy court to determine the amount of any penalty, whether punitive or pecuniary in nature, relating to taxes over which it has jurisdiction.

Jurisdiction of the tax court in bankruptcy cases. The Senate amendment provided a detailed series of rules concerning the jurisdiction of the U. S. Tax Court, or similar State or local administrative tribunal to determine personal tax liabilities of an individual debtor. The House amendment deletes these specific rules and relies on procedures to be

derived from broad general powers of the bankruptcy court.

Under the House amendment, as under present law, a corporation seeking reorganization under chapter 11 is considered to be personally before the bankruptcy court for purposes of giving that court jurisdiction over the debtor's personal liability for a nondischargeable tax.

The rules are more complex where the debtor is an individual under chapter 7, 11, or 13. An individual debtor or the tax authority can, as under section 17c of the present Bankruptcy Act [former section 35(c) of this title], file a request that the bankruptcy court determine the debtor's personal liability for the balance of any nondischargeable tax not satisfied from assets of the estate. The House amendment intends to retain these procedures and also adds a rule staying commencement or continuation of any proceeding in the Tax Court after the bankruptcy petition is filed, unless and until that stay is lifted by the bankruptcy judge under section 362(a)(8). The House amendment also stays assessment as well as collection of a prepetition claim against the debtor (sec. 362(a)(6)). A tax authority would not, however, be stayed from issuing a deficiency notice during the bankruptcy case (sec. (b)(7)). The Senate amendment repealed the existing authority of the Internal Revenue Service to make an immediate assessment of taxes upon bankruptcy (sec. 6871(a) of the code [section 6871(a) of Title 26, Internal Revenue Code]). See section 321 of the Senate bill. As indicated, the substance of that provision, also affecting State and local taxes, is contained in section 362(a)(6) of the House amendment, the statute of limitations is tolled under the House amendment while the bankruptcy case is pending.

Where no proceeding in the Tax Court is pending at the commencement of the bankruptcy case, the tax authority can, under the House amendment, file a claim against the estate for a prepetition tax liability and may also file a request that the bankruptcy court hear arguments and decide the merits of an individual debtor's personal liability for the balance of any nondischargeable tax liability not satisfied from assets of the estate. Bankruptcy terminology refers to the latter type of request as a creditor's complaint to determine the dischargeability of a debt. Where such a complaint is filed the bankruptcy court will have personal jurisdiction over an individual debtor, and the debtor himself would have no access to the Tax Court, or to any other court.

to determine his personal liability for nondischargeable taxes.

If a tax authority decides not to file a claim for taxes which would typically occur where there are few, if any, assets in the estate, normally the tax authority would also not request the bankruptcy court to rule on the debtor's personal liability for a nondischargeable tax. Under the House amendment, the tax authority would then have to follow normal procedures in order to collect a nondischargeable tax. For example, in the case of nondischargeable Federal income taxes, the Internal Revenue Service would be required to issue a deficiency notice to an individual debtor, and the debtor could then file a petition in the Tax Court—or a refund suit in a district court—as the forum in which to litigate his personal liability for a nondischargeable tax.

Under the House amendment, as under present law, an individual debtor can also file a complaint to determine dischargeability. Consequently, where the tax authority does not file a claim or a request that the bankruptcy court determine dischargeability of a specific tax liability, the debtor could file such a request on his own behalf, so that the bankruptcy court would then determine both the validity of the claim against assets in the estate and also the personal liability of the debtor for any nondischargeable tax.

Where a proceeding is pending in the Tax Court at the commencement of the bankruptcy case, the commencement of the bankruptcy case automatically stays further action in the Tax Court case unless and until the stay is lifted by the bankruptcy court. The Senate amendment repealed a provision of the Internal Revenue case barring a debtor from filing a petition in the Tax Court after commencement of a bankruptcy case (sec. 6871(b) of the code) [section 6871(b) of Title 26, Internal Revenue Code]. See section 321 of the Senate bill. As indicated earlier, the equivalent of the code amendment is embodied in section 362(a)(8) of the House amendment, which automatically stays commencement or continuation of any proceeding in the Tax Court until the stay is lifted or the case is terminated. The stay will permit sufficient time for the bankruptcy trustee to determine if he desires to join the Tax Court proceeding on behalf of the estate. Where the trustee chooses to join the Tax Court proceeding, it is expected that he will seek permission to intervene in the Tax Court case and then request that the stay on the Tax Court proceeding be lifted. In such a case, the

merits of the tax liability will be determined by the Tax Court, and its decision will bind both the individual debtor as to any taxes which are nondischargeable and the trustee as to the tax claim against the estate.

Where the trustee does not want to intervene in the Tax Court, but an individual debtor wants to have the Tax Court determine the amount of his personal liability for nondischargeable taxes, the debtor can request the bankruptcy court to lift the automatic stay on existing Tax Court proceedings. If the stay is lifted and the Tax Court reaches its decision before the bankruptcy court's decision on the tax claim against the estate, the decision of the Tax Court would bind the bankruptcy court under principles of *res judicata* because the decision of the Tax Court affected the personal liability of the debtor. If the trustee does not wish to subject the estate to the decision of the Tax Court if the latter court decides the issues before the bankruptcy court rules, the trustee could resist the lifting of the stay on the existing Tax Court proceeding. If the Internal Revenue Service had issued a deficiency notice to the debtor before the bankruptcy case began, but as of the filing of the bankruptcy petition the 90-day period for filing in the Tax Court was still running, the debtor would be automatically stayed from filing a petition in the Tax Court. If either the debtor or the Internal Revenue Service then files a complaint to determine dischargeability in the bankruptcy court, the decision of the bankruptcy court would bind both the debtor and the Internal Revenue Service.

The bankruptcy judge could, however, lift the stay on the debtor to allow him to petition the Tax Court, while reserving the right to rule on the tax authority's claim against assets of the estate. The bankruptcy court could also, upon request by the trustee, authorize the trustee to intervene in the Tax Court for purposes of having the estate also governed by the decision of the Tax Court.

In essence, under the House amendment, the bankruptcy judge will have authority to determine which court will determine the merits of the tax claim both as to claims against the estate and claims against the debtor concerning his personal liability for nondischargeable taxes. Thus, if the Internal Revenue Service, or a State or local tax authority, files a petition to determine dischargeability, the bankruptcy judge can either rule on the merits of the claim and continue the stay on any pending Tax Court proceeding or lift the stay on the Tax

Court and hold the dischargeability complaint in abeyance. If he rules on the merits of the complaint before the decision of the Tax Court is reached, the bankruptcy court's decision would bind the debtor as to nondischargeable taxes and the Tax Court would be governed by that decision under principles of *res judicata*. If the bankruptcy judge does not rule on the merits of the complaint before the decision of the Tax Court is reached, the bankruptcy court will be bound by the decision of the Tax Court as it affects the amount of any claim against the debtor's estate.

If the Internal Revenue Service does not file a complaint to determine dischargeability and the automatic stay on a pending Tax Court proceeding is not lifted, the bankruptcy court could determine the merits of any tax claim against the estate. That decision will not bind the debtor personally because he would not have been personally before the bankruptcy court unless the debtor himself asks the bankruptcy court to rule on his personal liability. In any such situation where no party filed a dischargeability petition, the debtor would have access to the Tax Court to determine his personal liability for a nondischargeable tax debt. While the Tax Court in such a situation could take into account the ruling of the bankruptcy court on claims against the estate in deciding the debtor's personal liability, the bankruptcy court's ruling would not bind the Tax Court under principles of *res judicata*, because the debtor, in that situation would not have been personally before the bankruptcy court.

If neither the debtor nor the Internal Revenue Service files a claim against the estate or a request to rule on the debtor's personal liability, any pending tax court proceeding would be stayed until the closing of the bankruptcy case, at which time the stay on the tax court would cease and the tax court case could continue for purposes of deciding the merits of the debtor's personal liability for nondischargeable taxes.

Audit of trustee's returns. Under both bills, the bankruptcy court could determine the amount of any administrative period taxes. The Senate amendment, however, provided for an expedited audit procedure which was mandatory in some cases. The House amendment (sec. 505(b)), adopts the provision of the House bill allowing the trustee discretion in all cases whether to ask the Internal Revenue Service, or State or local tax authority for a prompt audit of his returns on behalf of the estate. The House amendment, however, adopts the

provision of the Senate bill permitting a prompt audit only on the basis of tax returns filed by the trustee for completed taxable periods. Procedures for a prompt audit set forth in the Senate bill are also adopted in modified form.

Under the procedure, before the case can be closed, the trustee may request a tax audit by the local, State or Federal tax authority of all tax returns filed by the trustee. The taxing authority would have to notify the trustee and the bankruptcy court within 60 days whether it accepts returns or desires to audit the returns more fully. If an audit is conducted, the taxing authority would have to notify the trustee of tax deficiency within 180 days after the original request, subject to extensions of time if the bankruptcy court approves. If the trustee does not agree with the results of the audit, the trustee could ask the bankruptcy court to resolve the dispute. Once the trustee's tax liability for administration period taxes has thus been determined, the legal effect in a case under chapter 7 or 11 would be to discharge the trustee and any predecessor of the trustee, and also the debtor, from any further liability for these taxes.

The prompt audit procedure would not be available with respect to any tax liability as to which any return required to be filed on behalf of the estate is not filed with the proper tax authority. The House amendment also specifies that a discharge of the trustee or the debtor which would otherwise occur will not be granted, or will be void if the return filed on behalf of the estate reflects fraud or material misrepresentation of facts.

For purposes of the above prompt audit procedures, it is intended that the tax authority with which the request for audit is to be filed is, as to Federal taxes, the office of the District Director in the district where the bankruptcy case is pending.

Under the House amendment, if the trustee does not request a prompt audit, the debtor would not be discharged from possible transferee liability if any assets are returned to the debtor.

Assessment after decision. As indicated above, the commencement of a bankruptcy case automatically stays assessment of any tax (sec. 362(a)(6)). However, the House amendment provides (sec. 505(c)) that if the bankruptcy court renders a final judgment with regard to any tax (under the rules discussed above), the tax authority may then make an

assessment (if permitted to do so under otherwise applicable tax law) without waiting for termination of the case or confirmation of a reorganization plan.

Trustee's authority to appeal tax cases. The equivalent provision in the House bill (sec. 505(b)) and in the Senate bill (sec. 362(h)) authorizing the trustee to prosecute an appeal or review of a tax case are deleted as unnecessary. Section 541(a) of the House amendment provides that property of the estate is to include all legal or equitable interests of the

debtor. These interests include the debtor's causes of action, so that the specific provisions of the House and Senate bills are not needed.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392 set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy § 242.

West's Key No. Digests, Bankruptcy Ⓒ2055.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 506. Determination of secured status

(a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

(c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim.

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—

(1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or

(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2583; Pub.L. 98-353, Title III, § 448, July 10, 1984, 98 Stat. 374.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) of this section separates an undersecured creditor's claim into two parts: He has a secured claim to the extent of the value of his collateral; and he has an unsecured claim for the balance of his claim. The subsection also provides for the valuation of claims which involve setoffs under section 553. While courts will have to determine value on a case-by-case basis, the subsection makes it clear that valuation is to be determined in light of the purpose of the valuation and the proposed disposition or use of the subject property. This determination shall be made in conjunction with any hearing on such disposition or use of property or on a plan affecting the creditor's interest. To illustrate, a valuation early in the case in a proceeding under sections 361-363 would not be binding upon the debtor or creditor at the time of confirmation of the plan. Throughout the bill, references to secured claims are only to the claim determined to be secured under this subsection, and not to the full amount of the creditor's claim. This provision abolishes the use of the terms "secured creditor" and "unsecured creditor" and substitutes in their places the terms "secured claim" and "unsecured claim."

Subsection (b) codifies current law by entitling a creditor with an oversecured claim to any reasonable fees (including attorney's fees), costs, or charges provided under the agreement under which the claim arose. These fees, costs, and charges are secured claims to the extent that the value of the collateral exceeds the amount of the underlying claim.

Subsection (c) also codifies current law by permitting the trustee to recover from property the value of which is greater than the sum of the claims secured by a lien on that property the reasonable, necessary costs and expenses of preserving, or disposing of, the property. The recovery is limited to the extent of any benefit to the holder of such claim.

Subsection (d) provides that to the extent a secured claim is not allowed, its lien is void unless the holder had neither actual notice nor knowledge of the case, the lien was not listed by the debtor in a chapter 9 or 11 case or such claim was disallowed only under section 502(e).

Notes of Committee on the Judiciary, House Report No. 95-595. Subsection (d) permits liens to pass through the bankruptcy case unaffected. However, if a party in inter-

est requests the court to determine and allow or disallow the claim secured by the lien under section 502 and the claim is not allowed, then the lien is void to the extent that the claim is not allowed. The voiding provision does not apply to claims disallowed only under section 502(e), which requires disallowance of certain claims against the debtor by a codebtor, surety, or guarantor for contribution or reimbursement.

Legislative Statements. Section 506(a) of the House amendment adopts the provision contained in the Senate amendment and rejects a contrary provision as contained in H.R. 8200 as passed by the House. The provision contained in the Senate amendment and adopted by the House amendment recognizes that an amount subject to set-off is sufficient to recognize a secured status in the holder of such right. Additionally a determination of what portion of an allowed claim is secured and what portion is unsecured is binding only for the purpose for which the determination is made. Thus determinations for purposes of adequate protection is not binding for purposes of "cram down" on confirmation in a case under chapter 11.

Section 506(b) of the House amendment adopts language contained in the Senate amendment and rejects language contained in H.R. 8200 as passed by the House. If the security agreement between the parties provides for attorneys' fees, it will be enforceable under title 11, notwithstanding contrary law, and is recoverable from the collateral after any recovery under section 506(c).

Section 506(c) of the House amendment was contained in H.R. 8200 as passed by the House and adopted, verbatim, in the Senate amendment. Any time the trustee or debtor in possession expends money to provide for the reasonable and necessary cost and expenses of preserving or disposing of a secured creditor's collateral, the trustee or debtor in possession is entitled to recover such expenses from the secured party or from the property securing an allowed secured claim held by such party.

Section 506(d) of the House amendment is derived from H.R. 8200 as passed by the House and is adopted in lieu of the alternative test provided in section 506(d) of the Senate amendment. For purposes of section 506(d) of

the House amendment, the debtor is a party in interest.

The House amendment deletes section 506(d)(3) of the Senate amendment, which insures that a tax lien securing a nondischargeable tax claim is not voided because a tax authority with notice or knowledge of the bankruptcy case fails to file a claim for the liability (as it may elect not to do, if it is clear there are insufficient assets to pay the liability). Since the House amendment retains section 506(d) of the House bill that a lien is not voided unless a party in interest has requested

that the court determine and allow or disallow the claim, provision of the Senate amendment is not necessary.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Automatic preservation of avoided transfer, see section 551.

Claims secured by lien on property of estate, see section 1111.

Effect of dismissal, see section 349.

Liability of exempted property for debtor's debt, see section 522.

Postpetition effect of security interest, see section 552.

Library References:

C.J.S. Bankruptcy §§ 246, 247, 285.

West's Key No. Digests, Bankruptcy Ⓒ2852, 2931.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 507. Priorities

(a) The following expenses and claims have priority in the following order:

(1) First, administrative expenses allowed under section 503(b) of this title, and any fees and charges assessed against the estate under chapter 123 of title 28.

(2) Second, unsecured claims allowed under section 502(f) of this title.

(3) Third, allowed unsecured claims, but only to the extent of \$4,300 for each individual or corporation, as the case may be, earned within 90 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor;

(4) Fourth, allowed unsecured claims for contributions to an employee benefit plan—

(A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only

(B) for each such plan, to the extent of—

(i) the number of employees covered by each such plan multiplied by \$4,300; less

(ii) the aggregate amount paid to such employees under paragraph (3) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

(5) Fifth, allowed unsecured claims of persons—

(A) engaged in the production or raising of grain, as defined in section 557(b) of this title, against a debtor who owns or operates a grain storage facility, as defined in section 557(b) of this title, for grain or the proceeds of grain, or

(B) engaged as a United States fisherman against a debtor who has acquired fish or fish produce from a fisherman through a sale or conversion, and who is engaged in operating a fish produce storage or processing facility—

but only to the extent of \$4,300 for each such individual.

(6) Sixth, allowed unsecured claims of individuals, to the extent of \$1,950 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

(7) Seventh, allowed claims for debts to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for—

(A) a tax on or measured by income or gross receipts—

(i) for a taxable year ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;

(ii) assessed within 240 days, plus any time plus 30 days during which an offer in compromise with respect to such tax that was made

within 240 days after such assessment was pending, before the date of the filing of the petition; or

(iii) other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(C) of this title, not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case;

(B) a property tax assessed before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition;

(C) a tax required to be collected or withheld and for which the debtor is liable in whatever capacity;

(D) an employment tax on a wage, salary, or commission of a kind specified in paragraph (3) of this subsection earned from the debtor before the date of the filing of the petition, whether or not actually paid before such date, for which a return is last due, under applicable law or under any extension, after three years before the date of the filing of the petition;

(E) an excise tax on—

(i) a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after three years before the date of the filing of the petition; or

(ii) if a return is not required, a transaction occurring during the three years immediately preceding the date of the filing of the petition;

(F) a customs duty arising out of the importation of merchandise—

(i) entered for consumption within one year before the date of the filing of the petition;

(ii) covered by an entry liquidated or reliquidated within one year before the date of the filing of the petition; or

(iii) entered for consumption within four years before the date of the filing of the petition but unliquidated on such date, if the Secretary of the Treasury certifies that failure to liquidate such entry was due to an investigation pending on such date into assessment of antidumping or countervailing duties or fraud, or if information needed for the proper appraisalment or classification of such merchandise was not available to the appropriate customs officer before such date; or

(G) a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss.

(9) Ninth, allowed unsecured claims based upon any commitment by the debtor to a Federal depository institutions regulatory agency (or predecessor to such agency) to maintain the capital of an insured depository institution.

(b) If the trustee, under section 362, 363, or 364 of this title, provides adequate protection of the interest of a holder of a claim secured by a lien on property of the debtor and if, notwithstanding such protection, such creditor has a claim allowable under subsection (a)(1) of this section arising from the stay of

action against such property under section 362 of this title, from the use, sale, or lease of such property under section 363 of this title, or from the granting of a lien under section 364(d) of this title, then such creditor's claim under such subsection shall have priority over every other claim allowable under such subsection.

(c) For the purpose of subsection (a) of this section, a claim of a governmental unit arising from an erroneous refund or credit of a tax has the same priority as a claim for the tax to which such refund or credit relates.

(d) An entity that is subrogated to the rights of a holder of a claim of a kind specified in subsection (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(9) of this section is not subrogated to the right of the holder of such claim to priority under such subsection.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2583; Pub.L. 98-353, Title III, §§ 350, 449, July 10, 1984, 98 Stat. 358, 374; Pub.L. 101-647, Title XXV, § 2522(d), Nov. 29, 1990, 104 Stat. 4867; Pub.L. 103-394, Title I, § 108(c), Title II, § 207, Title III, § 304(c), Title V, § 501(b), (d), October 22, 1994, 108 Stat. 4112, 4123, 4132, 4142, 4145.

Historical and Revision Notes

1978 Acts. Section 507 specifies the kinds of claims that are entitled to priority in distribution, and the order of their priority. Paragraph (1) grants first priority to allowed administrative expenses and to fees and charges assessed against the estate under chapter 123 of title 28 [section 1911 et seq. of Title 28, Judiciary and Judicial Procedure]. Taxes included as administrative expenses under section 503(b)(1) of the bill generally receive the first priority, but the bill makes certain qualifications: Examples of these specially treated claims are the estate's liability for recapture of an investment tax credit claimed by the debtor before the title 11 case (this liability receives sixth priority) and the estate's employment tax liabilities on wages earned before, but paid after, the petition was filed (this liability generally receives the same priority as the wages).

"Involuntary gap" creditors, granted first priority under current law, are granted second priority by paragraph (2). This priority, covering claims arising in the ordinary course of the debtor's business or financial affairs after a title 11 case has begun but before a trustee is appointed or before the order for relief, includes taxes incurred during the conduct of such activities.

Paragraph (3) expands and increases the wage priority found in current section 64a(2) [section 104(a)(2) of former Title 11]. The amount entitled to priority is raised from \$600 to \$1800. The former figure was last adjusted in 1926. Inflation has made it nearly meaning-

less, and the bill brings it more than up to date. The three month limit of current law is retained, but is modified to run from the earlier of the date of the filing of the petition or the date of the cessation of the debtor's business. The priority is expanded to cover vacation, severance, and sick leave pay. The bill adds to the third priority so-called "trust fund" taxes, that is, withheld income taxes and the employees' share of the social security or railroad retirement taxes, but only to the extent that the wages on which taxes are imposed are themselves entitled to third priority.

The employer's share, the employment tax and the employer's share of the social security or railroad retirement tax on third priority compensation, is also included in the third priority category, but only if, and to the extent that the wages and related trust fund taxes have first been paid in full. Because of the claimants urgent need for their wages in the typical cases, the employer's taxes should not be paid before the wage claims entitled to priority, as well as the related trust fund taxes, are fully paid.

Paragraph (4) overrules *United States v. Embassy Restaurant*, 359 U.S. 29 (1958) [79 S.Ct. 554, 3 L.Ed.2d 601], which held that fringe benefits were not entitled to wage priority status. The bill recognizes the realities of labor contract negotiations, where fringe benefits may be substituted for wage demands. The priority granted is limited to claims for contributions to employee benefit plans such as pen-

sion plans, health or life insurance plans, and others, arising from services rendered within 120 days before the commencement of the case or the date of cessation of the debtor's business, whichever occurs first. The dollar limit placed on the total of all contributions payable under this paragraph is equal to the difference between the maximum allowable priority under paragraph (3), \$1,800, times the number of employees covered by the plan less the actual distributions under paragraph (3) with respect to these employees.

Paragraph (5) is a new priority for consumer creditors—those who have deposited money in connection with the purchase, lease, or rental of property, or the purchase of services, for their personal, family, or household use, that were not delivered or provided. The priority amount is not to exceed \$600. In order to reach only those persons most deserving of this special priority, it is limited to individuals whose adjustable gross income from all sources derived does not exceed \$20,000. See Senate Hearings, testimony of Prof. Vern Countryman, at pp. 848–849. The income of the husband and wife should be aggregated for the purposes of the \$20,000 limit if either or both spouses assert such a priority claim.

The sixth priority is for certain taxes. Priority is given to income taxes for a taxable year that ended on or before the date of the filing of the petition, if the last due date of the return for such year occurred not more than 3 years immediately before the date on which the petition was filed (§ 507(a)(6)(A)(i)). For the purposes of this rule, the last due date of the return is the last date under any extension of time to file the return which the taxing authority may have granted the debtor.

Employment taxes and transfer taxes (including gift, estate, sales, use and other excise taxes) are also given sixth priority if the transaction or event which gave rise to the tax occurred before the petition date, provided that the required return or report of such tax liabilities was last due within 3 years before the petition was filed or was last due after the petition date (§ 507(a)(6)(A)(ii).) The employment taxes covered under this rule are the employer's share of the social security and railroad retirement taxes and required employer payments toward unemployment insurance.

Priority is given to income taxes and other taxes of a kind described in section 507(a)(6)(A)(i) and (ii) which the Federal, State, or local tax authority had assessed within 3 years after the last due date of the return,

that is, including any extension of time to file the return, if the debtor filed in title 11 within 240 days after the assessment was made (§ 507(a)(6)(B)(i)). This rule may bring into the sixth priority the debtor's tax liability for some taxable years which would not qualify for priority under the general three-year rule of section 507(a)(6)(A).

The sixth priority category also includes taxes which the tax authority was barred by law from assessing or collecting at any time during the 300 days before the petition under title 11 was filed (§ 507(a)(6)(B)(ii)). In the case of certain Federal taxes, this preserves a priority for tax liabilities for years more than three years before the filing of the petition where the debtor and the Internal Revenue Service were negotiating over an audit of the debtor's returns or were engaged in litigation in the Tax Court. In such situations, the tax law prohibits the service's right to assess a tax deficiency until ninety days after the service sends the taxpayer a deficiency letter or, if the taxpayer files a petition in the Tax Court during that 90-day period, until the outcome of the litigation. A similar priority exists in present law, except that the taxing authority is allowed no time to assess and collect the taxes after the restrictions on assessment (discussed above) are lifted. Some taxpayers have exploited this loophole by filing in bankruptcy immediately after the end of the 90-day period or immediately after the close of Tax Court proceedings. The bill remedies this defect by preserving a priority for taxes the assessment of which was barred by law by giving the tax authority 300 days within which to make the assessment after the lifting of the bar and then to collect or file public notice of its tax lien. Thus, if a taxpayer files a title 11 petition at any time during that 300-day period, the tax deficiency will be entitled to priority. If the petition is filed more than 300 days after the restriction on assessment was lifted, the taxing authority will not have priority for the tax deficiency.

Taxes for which an offer in compromise was withdrawn by the debtor, or rejected by a governmental unit, within 240 days before the petition date (§ 507(a)(6)(B)(iii)) will also receive sixth priority. This rule closes a loophole under present law under which, following an assessment of tax, some taxpayers have submitted a formal offer in compromise, dragged out negotiations with the taxing authority until the tax liability would lose priority under the three-year priority period of present law,

and then filed in bankruptcy before the governmental unit could take collection steps.

Also included are certain taxes for which no return or report is required by law (§ 507(a)(6)(C)), if the taxable transaction occurred within three years before the petition was filed.

Taxes (not covered by the third priority) which the debtor was required by law to withhold or collect from others and for which he is liable in any capacity, regardless of the age of the tax claims (§ 507(a)(6)(D)) are included. This category covers the so-called "trust fund" taxes, that is, income taxes which an employer is required to withhold from the pay of his employees, the employees' shares of social security and railroad retirement taxes, and also Federal unemployment insurance. This category also includes excise taxes which a seller of goods or services is required to collect from a buyer and pay over to a taxing authority.

This category also covers the liability of a responsible corporate officer under the Internal Revenue Code [Title 26] for income taxes or for the employees' share of employment taxes which, under the tax law, the employer was required to withhold from the wages of employees. This priority will operate where a person found to be a responsible officer has himself filed a petition under title 11, and the priority covers the debtor's liability as an officer under the Internal Revenue Code [Title 26], regardless of the age of the tax year to which the tax relates.

The priority rules under the bill governing employment taxes can be summarized as follows: In the case of wages earned and actually paid before the petition under title 11 was filed, the liability for the employees' share of the employment taxes, regardless of the prepetition year in which the wages were earned and paid. The employer's share of the employment taxes on all wages earned and paid before the petition receive sixth priority; generally, these taxes will be those for which a return was due within three years before the petition. With respect to wages earned by employees before the petition but actually paid by the trustee after the title 11 case commenced, taxes required to be withheld receives the same priority as the wages themselves. Thus, the employees' share of taxes on third priority wages also receives third priority. Taxes on the balance of such wages receive no priority and are collectible only as general claims because the wages themselves are payable only as general claims and liability for the taxes arises

only to the extent the wages are actually paid. The employer's share of employment taxes on third priority wages earned before the petition but paid after the petition was filed receives third priority, but only if the wages in this category have first been paid in full. Assuming there are sufficient funds to pay third priority wages and the related employer taxes in full, the employer's share of taxes on the balance of wage payments becomes a general claim (because the wages themselves are payable as general claims). Both the employees' and the employer's share of employment taxes on wages earned and paid after the petition was filed receive first priority as administrative expenses.

Also covered by this sixth priority are property taxes required to be assessed within 3 years before the filing of the petition (§ 507(a)(6)(E)).

Taxes attributable to a tentative carryback adjustment received by the debtor before the petition was filed, such as a "quickie refund" received under section 6411 of the Internal Revenue Code [section 6411 of Title 26, Internal Revenue Code] (§ 507(a)(6)(F)) are included. However, the tax claim against the debtor will rein a prepetition loss year for which the tax return was last due, including extensions, within 3 years before the petition was filed.

Taxes resulting from a recapture, occasioned by a transfer during bankruptcy, of a tax credit or deduction taken during an earlier tax year (§ 507(a)(6)(G)) are included. A typical example occurs when there is a sale by the trustee of depreciable property during the case and depreciation deductions taken in prepetition years are subject to recapture under section 1250 of the Code [section 1250 of Title 26, Internal Revenue Code].

Taxes owed by the debtor as a transferee of assets from another person who is liable for a tax, if the tax claim against the transferor would have received priority in a chapter 11 case commenced by the transferor within 1 year before the date of the petition filed by the transferee (§ 507(a)(6)(H)), are included.

Also included are certain tax payments required to have been made during the 1 year immediately before the petition was filed, where the debtor had previously entered into a deferred payment agreement (including an offer in compromise) to pay an agreed liability in periodic installments but had become delinquent in one or more installments before the

petition was filed (§ 507(a)(6)(I)). This priority covers all types of deferred or part payment agreements. The priority covers only installments which first became due during the 1 year before the petition but which remained unpaid at the date of the petition. The priority does not come into play, however, if before the case began or during the case, the debtor and the taxing authority agree to a further extension of time to pay the delinquent amounts.

Certain tax-related liabilities which are not true taxes or which are not collected by regular assessment procedures (§ 507(a)(6)(J)) are included. One type of liability covered in this category is the liability under section 3505 of the Internal Revenue Code [section 3505 of Title 26, Internal Revenue Code] of a lender who pays wages directly to employees of another employer or who supplies funds to an employer for the payment of wages. Another is the liability under section 6332 of the Internal Revenue Code [section 6332 of Title 26, Internal Revenue Code], of a person who fails to turn over money or property of the taxpayer in response to a levy. Since the taxing authority must collect such a liability from the third party by suit rather than normal assessment procedures, an extra year is added to the normal 3-year priority periods. If a suit was commenced by the taxing authority within the four-year period and before the petition was filed, the priority is also preserved, provided that the suit had not terminated more than 1 year before the date of the filing of the petition.

Also included are certain unpaid customs duties which have not grown unreasonably "stale" (§ 507(a)(6)(K)). These include duties on imports entered for consumption with 3 years before the filing of the petition if the duties are still unliquidated on the petition date. If an import entry has been liquidated (in general, liquidation is in an administrative determination of the value and tariff rate of the item) or reliquidated, within two years of the filing of the petition the customs liability is given priority. If the Secretary of the Treasury certifies that customs duties were not liquidated because of an investigation into possible assessment of antidumping or countervailing duties, or because of fraud penalties, duties not liquidated for this reason during the five years before the importer filed under title 11 also will receive priority.

Subsection (a) of this section also provides specifically that interest on sixth priority tax

claims accrued before the filing of the petition is also entitled to sixth priority.

Subsection (b) of this section provides that any fine or penalty which represents compensation for actual pecuniary loss of a governmental unit, and which involves a tax liability entitled to sixth priority, is to receive the same priority.

Subsection (b) also provides that a claim arising from an erroneous refund or credit of tax is to be given the same priority as the tax to which the refund or credit relates. Senate Report No. 95-989.

1984 Acts. Statements by Legislative Leaders, see 1984 U.S. Code Cong. and Adm. News, p. 576.

1990 Acts. House Report No. 101-681(I), see 1990 U.S. Code Cong. and Adm. News, p. 6472.

1994 Acts. House Report No. 103-835, see 1994 U.S. Code Cong. and Adm. News, p. 3340.

Legislative Statements. Section 507(a)(3) of the House amendment represents a compromise dollar amount and date for the priority between similar provisions contained in H.R. 8200 as passed by the House and the Senate amendments. A similar compromise is contained in section 507(a)(4).

Section 507(a)(5) represents a compromise on amount between the priority as contained in H.R. 8200 as passed by the House and the Senate amendment. The Senate provision for limiting the priority to consumers having less than a fixed gross income is deleted.

Section 507(a)(6) of the House amendment represents a compromise between similar provisions contained in H.R. 8200 as passed by the House and the Senate amendment.

Section 507(b) of the House amendment is new and is derived from the compromise contained in the House amendment with respect to adequate protection under section 361. Subsection (b) provides that to the extent adequate protection of the interest of a holder of a claim proves to be inadequate, then the creditor's claim is given priority over every other allowable claim entitled to distribution under section 507(a). Section 507(b) of the Senate amendment is deleted.

Section 507(c) of the House amendment is new. Section 507(d) of the House amendment prevents subrogation with respect to priority for certain priority claims. Subrogation with respect to priority is intended to be permitted

for administrative claims and claims arising during the gap period.

Priorities: Under the House amendment, taxes receive priority as follows:

First. Administration expenses: The amendment generally follows the Senate amendment in providing expressly that taxes incurred during the administration of the estate share the first priority given to administrative expenses generally. Among the taxes which receives first priority, as defined in section 503, are the employees' and the employer's shares of employment taxes on wages earned and paid after the petition is filed. Section 503(b)(1) also includes in administration expenses a tax liability arising from an excessive allowance by a tax authority of a "quickie refund" to the estate. (In the case of Federal taxes, such refunds are allowed under special rules based on net operating loss carrybacks (section 6411 of the Internal Revenue Code) [section 6411 of Title 26, Internal Revenue Code]).

An exception is made to first priority treatment for taxes incurred by the estate with regard to the employer's share of employment taxes on wages earned from the debtor before the petition but paid from the estate after the petition has been filed. In this situation, the employer's tax receives either sixth priority or general claim treatment.

The House amendment also adopts the provisions of the Senate amendment which include in the definition of administrative expenses under section 503 any fine, penalty (including "additions to tax" under applicable tax laws) or reduction in credit imposed on the estate.

Second. "Involuntary gap" claims: "Involuntary gap" creditors are granted second priority by paragraph (2) of section 507(a). This priority includes tax claims arising in the ordinary course of the debtor's business or financial affairs after he has been placed involuntarily in bankruptcy but before a trustee is appointed or before the order for relief.

Third. Certain taxes on prepetition wages: Wage claims entitled to third priority are for compensation which does not exceed \$2,000 and was earned during the 90 days before the filing of the bankruptcy petition or the cessation of the debtor's business. Certain employment taxes receive third priority in payment from the estate along with the payment of wages to which the taxes relate. In the case of wages earned before the filing of the petition, but paid by the trustee (rather than by the

debtor) after the filing of the petition, claims or the employees' share of the employment taxes (withheld income taxes and the employees' share of the social security or railroad retirement tax) receive third priority to the extent the wage claims themselves are entitled to this priority.

In the case of wages earned from and paid by the debtor before the filing of the petition, the employer's share of the employment taxes on these wages paid by the debtor receives sixth priority or, if not entitled to that priority, are treated only as general claims. Under the House amendment, the employer's share of employment taxes on wages earned by employees of the debtor, but paid by the trustee after the filing of the bankruptcy petition, will also receive sixth priority to the extent that claims for the wages receive third priority. To the extent the claims for wages do not receive third priority, but instead are treated only as general claims, claims for the employer's share of the employment taxes attributable to those wages will also be treated as general claims. In calculating the amounts payable as general wage claims, the trustee must pay the employer's share of employment taxes on such wages.

Sixth priority. The House amendment modifies the provisions of both the House bill and Senate amendment in the case of sixth priority taxes. Under the amendment, the following Federal, State and local taxes are included in the sixth priority:

First. Income and gross receipts taxes incurred before the date of the petition for which the last due date of the return, including all extensions of time granted to file the return, occurred within 3 years before the date on which the petition was filed, or after the petition date. Under this rule, the due date of the return, rather than the date on which the taxes were assessed, determines the priority.

Second. Income and gross receipts taxes assessed at any time within 240 days before the petition date. Under this rule, the date on which the governmental unit assesses the tax, rather than the due date of the return, determines the priority.

If, following assessment of a tax, the debtor submits an offer in compromise to the governmental unit, the House amendment provides that the 240-day period is to be suspended for the duration of the offer and will resume running after the offer is withdrawn or rejected by the governmental unit, but the tax liability will receive priority if the title 11 petition is filed

during the balance of the 240-day period or during a minimum of 30 days after the offer is withdrawn or rejected. This rule modifies a provision of the Senate amendment dealing specifically with offers in compromise. Under the modified rule, if, after the assessment, an offer in compromise is submitted by the debtor and is still pending (without having been accepted or rejected) at the date on which a title 11 petition is filed, the underlying liability will receive sixth priority. However, if an assessment of a tax liability is made but the tax is not collected within 240 days, the tax will not receive priority under section 507(a)(6)(A)(i) and the debtor cannot revive a priority for that tax by submitting an offer in compromise.

Third. Income and gross receipts taxes not assessed before the petition date but still permitted, under otherwise applicable tax laws, to be assessed. Thus, for example, a prepetition tax liability is to receive sixth priority under this rule if, under the applicable statute of limitations, the tax liability can still be assessed by the tax authority. This rule also covers situations referred to in section 507(a)(6)(B)(ii) of the Senate amendment where the assessment or collection of a tax was prohibited before the petition pending exhaustion of judicial or administrative remedies, except that the House amendment eliminates the 300-day limitation of the Senate bill. So, for example, if before the petition a debtor was engaged in litigation in the Tax Court, during which the Internal Revenue Code [Title 26] bars the Internal Revenue Service from assessing or collecting the tax, and if the tax court decision is made in favor of the Service before the petition under title 11 is filed, thereby lifting the restrictions on assessment and collection, the tax liability will receive sixth priority even if the tax authority does not make an assessment within 300 days before the petition (provided, of course, that the statute of limitations on assessment has not expired by the petition date).

In light of the above categories of the sixth priority, and tax liability of the debtor (under the Internal Revenue Code [Title 26] or State or local law) as a transferee of property from another person will receive sixth priority without the limitations contained in the Senate amendment so long as the transferee liability had not been assessed by the tax authority by the petition date but could still have been assessed by that date under the applicable tax statute of limitations or, if the transferee liability had been assessed before the petition, the

assessment was made no more than 240 days before the petition date.

Also in light of the above categories, the treatment of prepetition tax liabilities arising from an excessive allowance to the debtor of a tentative carryback adjustment, such as a "quickie refund" under section 6411 of the Internal Revenue Code [section 6411 of Title 26, Internal Revenue Code], is revised as follows: If the tax authority has assessed the additional tax before the petition, the tax liability will receive priority if the date of assessment was within 240 days before the petition date. If the tax authority had not assessed the additional tax by the petition, the tax liability will still receive priority so long as, on the petition date, assessment of the liability is not barred by the statute of limitations.

Fourth. Any property tax assessed before the commencement of the case and last payable without penalty within 1 year before the petition, or thereafter.

Fifth. Taxes which the debtor was required by law to withhold or collect from others and for which he is liable in any capacity, regardless of the age of the tax claims. This category covers the so-called "trust fund" taxes, that is, income taxes which an employer is required to withhold from the pay of his employees, and the employees' share of social security taxes.

In addition, this category includes the liability of a responsible officer under the Internal Revenue Code (Sec. 6672 [section 6672 of Title 26, Internal Revenue Code]) for income taxes or for the employees' share of social security taxes which that officer was responsible for withholding from the wages of employees and paying to the Treasury, although he was not himself the employer. This priority will operate when a person found to be a responsible officer has himself filed in title 11, and the priority will cover the debtor's responsible officer liability regardless of the age of the tax year to which the tax relates. The U.S. Supreme Court has interpreted present law to require the same result as will be reached under this rule. *U.S. v. Sotelo*, 436 U.S. 268 (1978) [98 S.Ct. 1795, 56 L.Ed.2d 275, rehearing denied 98 S.Ct. 3126, 438 U.S. 907, 57 L.Ed.2d 1150].

This category also includes the liability under section 3505 of the Internal Revenue Code [section 3505 of Title 26, Internal Revenue Code] of a taxpayer who loans money for the payment of wages or other compensation.

Sixth. The employer's share of employment taxes on wages paid before the petition and on

third-priority wages paid postpetition by the estate. The priority rules under the House amendment governing employment taxes can thus be summarized as follows: Claims for the employees' shares of employment taxes attributable to wages both earned and paid before the filing of the petition are to receive sixth priority. In the case of employee wages earned, but not paid, before the filing of the bankruptcy petition, claims for the employees' share of employment taxes receive third priority to the extent the wages themselves receive third priority. Claims which relate to wages earned before the petition, but not paid before the petition (and which are not entitled to the third priority under the rule set out above), will be paid as general claims. Since the related wages will receive no priority, the related employment taxes would also be paid as nonpriority general claims.

The employer's share of the employment taxes on wages earned and paid before the bankruptcy petition will receive sixth priority to the extent the return for these taxes was last due (including extensions of time) within 3 years before the filing of the petition, or was due after the petition was filed. Older tax claims of this nature will be payable as general claims. In the case of wages earned by employees before the petition, but actually paid by the trustee (as claims against the estate) after the title 11 case commenced, the employer's share of the employment taxes on third priority wages will be payable as sixth priority claims and the employer's taxes on prepetition wages which are treated only as general claims will be payable only as general claims. In calculating the amounts payable as general wage claims, the trustee must pay the employer's share of employment taxes on such wages. The House amendment thus deletes the provision of the Senate amendment that certain employer taxes receive third priority and are to be paid immediately after payment of third priority wages and the employees' shares of employment taxes on those wages.

In the case of employment taxes relating to wages earned and paid after the petition, both the employees' shares and the employer's share will receive first priority as administrative expenses of the estate.

Seventh. Excise taxes on transactions for which a return, if required, is last due, under otherwise applicable law or under any extension of time to file the return, within 3 years before the petition was filed, or thereafter. If a return is not required with regard to a particu-

lar excise tax, priority is given if the transaction or event itself occurred within 3 years before the date on which the title 11 petition was filed. All Federal, State or local taxes generally considered or expressly treated as excises are covered by this category, including sales taxes, estate and gift taxes, gasoline and special fuel taxes, and wagering and truck taxes.

Eighth. Certain unpaid customs duties. The House amendment covers in this category duties on imports entered for consumption within 1 year before the filing of the petition, but which are still unliquidated on the petition date; duties covered by an entry liquidated or reliquidated within 1 year before the petition date; and any duty on merchandise entered for consumption within 4 years before the petition but not liquidated on the petition date, if the Secretary of the Treasury or his delegate certifies that duties were not liquidated because of possible assessment of antidumping or countervailing duties or fraud penalties.

For purposes of the above priority rules, the House amendment adopts the provision of the Senate bill that any tax liability which, under otherwise applicable tax law, is collectible in the form of a "penalty," is to be treated in the same manner as a tax liability. In bankruptcy terminology, such tax liabilities are referred to as pecuniary loss penalties. Thus, any tax liability which under the Internal Revenue Code [Title 26] or State or local tax law is payable as a "penalty," in addition to the liability of a responsible person under section 6672 of the Internal Revenue Code [section 6672 of Title 26, Internal Revenue Code] will be entitled to the priority which the liability would receive if it were expressly labeled as a "tax" under the applicable tax law. However, a tax penalty which is punitive in nature is given subordinated treatment under section 726(a)(4).

The House amendment also adopts the provision of the Senate amendment that a claim arising from an erroneous refund or credit of tax, other than a "quickie refund," is to receive the same priority as the tax to which the refund or credit relates.

The House amendment deletes the express provision of the Senate amendment that a tax liability is to receive sixth priority if it satisfies any one of the subparagraphs of section 507(a)(6) even if the liability fails to satisfy the terms of one or more other subparagraphs. No change of substance is intended by the deletion, however, in light of section 102(5) of the House amendment, providing a rule of con-

struction that the word "or" is not intended to be exclusive.

The House amendment deletes from the express priority categories of the Senate amendment the priority for a debtor's liability as a third party for failing to surrender property or to pay an obligation in response to a levy for taxes of another, and the priority for amounts provided for under deferred payment agreements between a debtor and the tax authority.

The House amendment also adopts the substance of the definition in section 346(a) the Senate amendment of when taxes are to be considered "incurred" except that the House amendment applies these definitions solely for purposes of determining which category of section 507 tests the priority of a particular tax liability. Thus, for example, the House amendment contains a special rule for the treatment of taxes under the 45-day exception to the preference rules under section 547 and the definitions of when a tax is incurred for priority purposes are not to apply to such preference rules. Under the House amendment, for purposes of the priority rules, a tax on income for a particular period is to be considered "incurred" on the last day of the period. A tax on or measured by some event, such as the payment of wages or a transfer by reason of death or gift, or an excise tax on a sale or other transaction, is to be considered "incurred" on the date of the transaction or event.

Amendments

1994 Amendments. Subsec. (a)(3). Pub.L. 103-394, § 207, completely revised par. (3). Prior to revision, par. (3) read as follows:

"(3) Third, allowed unsecured claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay—

"(A) earned by an individual within 90 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only

"(B) to the extent of \$2,000 for each such individual."

Subsec. (a)(4)(B)(i). Pub.L. 103-394, § 108(c)(1), substituted "multiplied by \$4,000" for "multiplied by \$2,000".

Subsec. (a)(5)(A). Pub.L. 103-394, § 501(b)(3), substituted "section 557(b)" for "section 557(b)(1)", and "section 557(b)" for "section 557(b)(2)".

Subsec. (a)(5). Pub.L. 103-394, § 108(c)(2), substituted "but only to the extent of \$4,000

for each such individual." for "but only to the extent of \$2,000 for each such individual."

Subsec. (a)(6). Pub.L. 103-394, § 108(c)(3), substituted "allowed unsecured claims of individuals, to the extent of \$1,800 for each such individual," for "allowed unsecured claims of individuals, to the extent of \$900 for each such individual,".

Subsec. (a)(7). Pub.L. 103-394, § 304(c)(2), (3), added par. (7). Former par. (7) redesignated (8).

Subsec. (a)(8). Pub.L. 103-394, § 304(c)(1), (2), redesignated former par. (7) as (8). Former par. (8) redesignated (9).

Subsec. (a)(9). Pub.L. 103-394, § 304(c)(1), redesignated former par. (8) as (9).

Pub.L. 103-394, § 501(d)(11)(A), substituted "a Federal depository institutions regulatory agency (or predecessor to such agency)" for "the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Director of the Office of Thrift Supervision, the Comptroller of the Currency, or the Board of Governors of the Federal Reserve System, or their predecessors or successors,".

Subsec. (d). Pub.L. 103-394, § 501(d)(11)(B), inserted reference to (a)(7), (a)(8), or (a)(9), following reference to (a)(6).

1990 Amendments. Subsec. (a)(8). Pub.L. 101-647 added par. (8).

1984 Amendments. Subsec. (a)(3). Pub.L. 98-353, § 449(a)(1), added a comma following "severance".

Subsec. (a)(4). Pub.L. 98-353, § 449(a)(2), substituted "an employee benefit plan" for "employee benefit plans" in provisions preceding Subpar. (A).

Subsec. (a)(4)(B)(i). Pub.L. 98-353, § 449(a)(3), added "each" following "covered by".

Subsec. (a)(5). Pub.L. 98-353, § 350(3), added par. (5). Former par. (5) was redesignated as (6).

Subsec. (a)(6). Pub.L. 98-353, § 350(1), redesignated former par. (5) as (6) and, as so redesignated, substituted "Sixth" for "Fifth". Former par. (6) was redesignated as (7).

Subsec. (a)(7). Pub.L. 98-353, § 350(2), redesignated former par. (6) as (7) and, as so redesignated, substituted "Seventh" for "Sixth".

Pub.L. 98-353, § 449(a)(4), added “only” following “units.”.

Subsec. (c). Pub.L. 98-353, § 449(b), substituted “has the same priority” for “shall be treated the same”.

Effective Dates

1994 Acts. Amendments by Pub.L. 103-394 effective on Oct. 22, 1994, and not to apply with respect to cases commenced under Title 11 of the United States Code before Oct. 22, 1994, see section 702 of Pub.L. 103-394.

1984 Acts. Amendment by Pub.L. 98-353 effective with respect to cases filed 90 days

after July 10, 1984, see section 552(a), formerly 553(a) of Pub.L. 98-353.

Separability of Provisions. If any provision of or amendment made by Pub.L. 103-394 or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remaining provisions of and amendments made by Pub.L. 103-394 and the application of such provisions and amendments to any person or circumstance shall not be affected thereby, see section 701 of Pub.L. 103-394.

Cross References

Applicability of subsec. (a)(1) of this section in chapter 9 cases, see section 901.

Confirmation upon payment of administrative expenses, fees, and charges, see section 943.

Designation by plan of classes of claims, see section 1123.

Distribution of

Certain estate property subject to liens, see section 724.

Customer property in commodity broker liquidation cases, see section 766.

Customer property in stockbroker liquidation cases, see section 752.

Property of estate, see section 726.

Tax or customs duty excepted from discharge, see section 523.

Time of payment of administrative expenses, fees and charges in Chapter 13 cases, see section 1326.

Treatment of certain claims as affecting confirmation of plan, see section 1129.

Unsecured debt having priority over certain administrative expenses, see section 364.

Library References:

C.J.S. Bankruptcy §§ 201 et seq., 255 et seq., 351, 353.

West's Key No. Digests, Bankruptcy Ⓒ2951-2972.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 508. Effect of distribution other than under this title

(a) If a creditor receives, in a foreign proceeding, payment of, or a transfer of property on account of, a claim that is allowed under this title, such creditor may not receive any payment under this title on account of such claim until each of the other holders of claims on account of which such holders are entitled to share equally with such creditor under this title has received payment under this title equal in value to the consideration received by such creditor in such foreign proceeding.

(b) If a creditor of a partnership debtor receives, from a general partner that is not a debtor in a case under chapter 7 of this title, payment of, or a transfer of property on account of, a claim that is allowed under this title and that is not secured by a lien on property of such partner, such creditor may not receive any payment under this title on account of such claim until each of the other holders of claims on account of which such holders are entitled to share equally with such creditor under this title has received payment under this title equal in value to the consideration received by such creditor from such general partner.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2585.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section prohibits a creditor from receiving any distribution in the bankruptcy case if he has received payment of a portion of his claim in a foreign proceeding, until the other creditors in the bankruptcy case in this country that are entitled to share equally with that creditor have received as much as he has in the foreign proceeding.

Legislative Statements. Section 508(b) of the House amendment is new and provides an identical rule with respect to a creditor of a partnership who receives payment from a partner, to that of a creditor of a debtor who receives a payment in a foreign proceeding involving the debtor.

Library References:

C.J.S. Bankruptcy §§ 39, 267.

West's Key No. Digests, Bankruptcy Ⓒ2341, 2964.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 509. Claims of codebtors

(a) Except as provided in subsection (b) or (c) of this section, an entity that is liable with the debtor on, or that has secured, a claim of a creditor against the debtor, and that pays such claim, is subrogated to the rights of such creditor to the extent of such payment.

(b) Such entity is not subrogated to the rights of such creditor to the extent that—

(1) a claim of such entity for reimbursement or contribution on account of such payment of such creditor's claim is—

(A) allowed under section 502 of this title;

(B) disallowed other than under section 502(e) of this title; or

(C) subordinated under section 510 of this title; or

(2) as between the debtor and such entity, such entity received the consideration for the claim held by such creditor.

(c) The court shall subordinate to the claim of a creditor and for the benefit of such creditor an allowed claim, by way of subrogation under this section, or for reimbursement or contribution, of an entity that is liable with the debtor on, or that has secured, such creditor's claim, until such creditor's claim is paid in full, either through payments under this title or otherwise.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2585; Pub.L. 98-353, Title III, § 450, July 10, 1984, 98 Stat. 375.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 509 deals with codebtors generally, and is in addition to the disallowance provision in section 502(e). This section is based on the notion that the only rights available to a surety, guar-

antor, or comaker are contribution, reimbursement, and subrogation. The right that applies in a particular situation will depend on the agreement between the debtor and the codebtor, and on whether and how payment was made by the codebtor to the creditor. The

claim of a surety or codebtor for contribution or reimbursement is discharged even if the claim is never filed, as is any claim for subrogation even if the surety or codebtor chooses to file a claim for contribution or reimbursement instead.

Subsection (a) subrogates the codebtor (whether as a codebtor, surety, or guarantor) to the rights of the creditor, to the extent of any payment made by the codebtor to the creditor. Whether the creditor's claim was filed under section 501(a) or 501(b) is irrelevant. The right of subrogation will exist even if the primary creditor's claim is allowed by virtue of being listed under proposed 11 U.S.C. 924 or 1111, and not by reason of a proof of claim.

Subsection (b) permits a subrogated codebtor to receive payments in the bankruptcy case only if the creditor has been paid in full, either through payments under the bankruptcy code or otherwise.

Legislative Statements. Section 509 of the House amendment represents a substantial revision of provisions contained in H.R. 8200 as passed by the House and in the Senate amendment. Section 509(a) states a general rule that a surety or co-debtor is subrogated to the rights of a creditor assured by the surety or co-debtor to the extent the surety or co-debtor pays such creditor. Section 509(b) states a general exception indicating that subrogation is not granted to the extent that a claim of a

surety or co-debtor for reimbursement or contribution is allowed under section 502 or disallowed other than under section 502(e). Additionally, section 509(b)(1)(C) provides that such claims for subrogation are subordinated to the extent that a claim of the surety or codebtor for reimbursement or contribution is subordinated under section 510(a)(1) or 510(b). Section 509(b)(2) reiterates the well-known rule that prevents a debtor that is ultimately liable on the debt from recovering from a surety or a co-debtor. Although the language in section 509(b)(2) focuses in terms of receipt of consideration, legislative history appearing elsewhere indicates that an agreement to share liabilities should prevail over an agreement to share profits throughout title 11. This is particularly important in the context of co-debtors who are partners. Section 509(c) subordinates the claim of a surety or co-debtor to the claim of an assured creditor until the creditor's claim is paid in full.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Library References:

C.J.S. Bankruptcy § 241.

West's Key No. Digests, Bankruptcy Ⓒ2823.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 510. Subordination

(a) A subordination agreement is enforceable in a case under this title to the same extent that such agreement is enforceable under applicable nonbankruptcy law.

(b) For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal

the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock.

(c) Notwithstanding subsections (a) and (b) of this section, after notice and a hearing, the court may—

(1) under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest; or

(2) order that any lien securing such a subordinated claim be transferred to the estate.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2586; Pub.L. 98-353, Title III, § 451, July 10, 1984, 98 Stat. 375.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) requires the court to enforce subordination agreements. A subordination agreement will not be enforced, however, in a reorganization case in which the class that is the beneficiary of the agreement has accepted, as specified in proposed 11 U.S.C. 1126, a plan that waives their rights under the agreement. Otherwise, the agreement would prevent just what chapter 11 contemplates: that seniors may give up rights to juniors in the interest of confirmation of a plan and rehabilitation of the debtor. The subsection also requires the court to subordinate in payment any claim for rescission of a purchase or sale of a security of the debtor or of an affiliate, or for damages arising from the purchase or sale of such a security, to all claims and interests that are senior to the claim or interest represented by the security. Thus, the later subordination varies with the claim or interest involved. If the security is a debt instrument, the damages or rescission claim will be granted the status of a general unsecured claim. If the security is an equity security, the damages or rescission claim is subordinated to all creditors and treated the same as the equity security itself.

Subsection (b) authorizes the bankruptcy court, in ordering distribution of assets, to subordinate all or any part of any claim to all or any part of another claim, regardless of the priority ranking of either claim. In addition, any lien securing such a subordinated claim may be transferred to the estate. The bill provides, however, that any subordination ordered under this provision must be based on principles of equitable subordination. These principles are defined by case law, and have

generally indicated that a claim may normally be subordinated only if its holder is guilty of misconduct. As originally introduced, the bill provided specifically that a tax claim may not be subordinated on equitable grounds. The bill deletes this express exception, but the effect under the amendment should be much the same in most situations since, under the judicial doctrine of equitable subordination, a tax claim would rarely be subordinated.

Legislative Statements. Section 510(c)(1) of the House amendment represents a compromise between similar provisions in the House bill and Senate amendment. After notice and a hearing, the court may, under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest. As a matter of equity, it is reasonable that a court subordinate claims to claims and interests to interests. It is intended that the term “principles of equitable subordination” follow existing case law and leave to the courts development of this principle. To date, under existing law, a claim is generally subordinated only if holder of such claim is guilty of inequitable conduct, or the claim itself is of a status susceptible to subordination, such as a penalty or a claim for damages arising from the purchase or sale of a security of the debtor. The fact that such a claim may be secured is of no consequence to the issue of subordination. However, it is inconceivable that the status of a claim as a secured claim could ever be grounds for justifying equitable subordination.

Since the House amendment authorizes subordination of claims only under principles of equitable subordination, and thus incorporates principles of existing case law, a tax claim would rarely be subordinated under this provision of the bill.

Section 511 of the Senate amendment is deleted. Its substance is adopted in section 502(b)(9) of the House amendment which reflects an identical provision contained in H.R. 8200 as passed by the House.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions.

For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Certain customer claims, subordination of, see section 747.

Confirmation of plan, see section 1129.

Distribution of,

Customer property, see section 752.

Property of estate, see section 726.

Effect of dismissal, see section 349.

Property of estate, see section 541.

Property recoverable by trustee as exempt, see section 522.

Unpaid portion of certain claims as entitled to distribution, see section 766.

Library References:

C.J.S. Bankruptcy §§ 264, 351.

West's Key No. Digests, Bankruptcy ☞2967.1-2970.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

SUBCHAPTER II—DEBTOR'S DUTIES AND BENEFITS

§ 521. Debtor's duties

The debtor shall—

(1) file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor's financial affairs;

(2) ~~if an individual debtor's schedule of assets and liabilities includes consumer debts which are secured by property of the estate—~~

⌘ (A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, ~~the debtor shall file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property;~~ ⌘

(B) within forty-five days after the filing of a notice of intent under this section, or within such additional time as the court, for cause, within such forty-five day period fixes, the debtor shall perform his intention

with respect to such property, as specified by subparagraph (A) of this paragraph; and

(C) nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title;

(3) if a trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

(4) if a trustee is serving in the case, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title; and

(5) appear at the hearing required under section 524(d) of this title.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2586; Pub.L. 98-353, Title III, §§ 305, 452, July 10, 1984, 98 Stat. 352, 375; Pub.L. 99-554, Title II, § 283(h), Oct. 27, 1986, 100 Stat. 3117.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section lists three duties of the debtor in a bankruptcy case. The Rules of Bankruptcy Procedure will specify the means of carrying out these duties. The first duty is to file with the court a list of creditors and, unless the court orders otherwise, a schedule of assets and liabilities and a statement of his financial affairs. Second, the debtor is required to cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties. Finally, the debtor must surrender to the trustee all property of the estate, and any recorded information, including books, documents, records, and papers, relating to property of the estate. This phrase "recorded information, including books, documents, records, and papers," has been used here and throughout the bill as a more general term, and includes such other forms of recorded information as data in computer storage or in other machine readable forms.

The list in this section is not exhaustive of the debtor's duties. Others are listed elsewhere in proposed title 11, such as in section 343, which requires the debtor to submit to examination, or in the Rules of Bankruptcy Procedure, as continued by § 404(a) of S. 2266, such as the duty to attend any hearing on discharge, Rule 402(2).

Legislative Statements. Section 521 of the House amendment modifies a comparable provision contained in the House bill and Senate amendment. The Rules of Bankruptcy Procedure should provide where the list of creditors is to be filed. In addition, the debtor is required to attend the hearing on discharge under section 524(d).

Codification. Amendment by Pub.L. 98-353 § 452 was executed to par. (4) as the probable intent of Congress although the directory language specified that the amendment be to par. (3) "as redesignated in section 305 [of Pub.L. 98-353]".

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Filing of list, schedule and statement by trustee, see section 1106.

Proof of claim or interest deemed filed if scheduled, see section 1111.

Property scheduled but unadministered before close of case deemed abandoned, see section 554.

Library References:

C.J.S. Bankruptcy §§ 44, 111, 112, 184, 186, 191, 350.

West's Key No. Digests, Bankruptcy ☞ 2321-2325, 3022, 3034, 3063.1, 3415.1-3417.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 522. Exemptions

from property of the estate § 541

(a) In this section—

(1) “dependent” includes spouse, whether or not actually dependent; and

(2) “value” means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

(b) ~~Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection.~~ In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed. Such property is—

(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,

(2)(A) ~~any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place; and~~

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is

determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

- (1) a debt of a kind specified in section 523(a)(1) or 523(a)(5) of this title;
- (2) a debt secured by a lien that is—

(A)(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title: and

(ii) not void under section 506(d) of this title;

(B) a tax lien, notice of which is properly filed; or

(3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution; or

(4) a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

(d) The following property may be exempted under subsection (b)(1) of this section:

(1) The debtor's aggregate interest, not to exceed \$16,150 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed \$2,575 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed \$425 in value in any particular item or \$8,625 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed \$1,075 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in any property, not to exceed in value \$850 plus up to \$8,075 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed \$1,625 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmaturing life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value \$8,625 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan

value of, any unmaturing life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive—

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veterans' benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless—

(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

(11) The debtor's right to receive, or property that is traceable to—

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed \$16,150, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(e) A waiver of an exemption executed in favor of a creditor that holds an unsecured claim against the debtor is unenforceable in a case under this title with respect to such claim against property that the debtor may exempt under subsection (b) of this section. A waiver by the debtor of a power under subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i) of this

section to exempt property, or under subsection (i) of this section to recover property or to preserve a transfer, is unenforceable in a case under this title.

(f)(1) Notwithstanding any waiver of exemptions, but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) a judicial lien, ~~other than a judicial lien that secures a debt—~~

(i) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and

(ii) to the extent that such debt—

(I) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and

(II) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support; or

(B) a nonpossessory, nonpurchase-money security interest in any—

(i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—

(i) the lien;

(ii) all other liens on the property; and

(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens.

(B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.

(C) This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.

(3) In a case in which State law that is applicable to the debtor—

(A) permits a person to voluntarily waive a right to claim exemptions under subsection (d) or prohibits a debtor from claiming exemptions under subsection (d); and

(B) either permits the debtor to claim exemptions under State law without limitation in amount, except to the extent that the debtor has permitted the fixing of a consensual lien on any property or prohibits avoidance of a consensual lien on property otherwise eligible to be claimed as exempt property;

the debtor may not avoid the fixing of a lien on an interest of the debtor or a dependent of the debtor in property if the lien is a nonpossessory, nonpurchase-money security interest in implements, professional books, or tools of the trade of the debtor or a dependent of the debtor or farm animals or crops of the debtor or a dependent of the debtor to the extent the value of such implements, professional books, tools of the trade, animals, and crops exceeds \$5,000.

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1)(A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property; or

(2) the debtor could have avoided such transfer under subsection (f)(2) of this section.

(h) The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if—

(1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 553 of this title; and

(2) the trustee does not attempt to avoid such transfer.

(i)(1) If the debtor avoids a transfer or recovers a setoff under subsection (f) or (h) of this section, the debtor may recover in the manner prescribed by, and subject to the limitations of, section 550 of this title, the same as if the trustee had avoided such transfer, and may exempt any property so recovered under subsection (b) of this section.

(2) Notwithstanding section 551 of this title, a transfer avoided under section 544, 545, 547, 548, 549, or 724(a) of this title, under subsection (f) or (h) of this section, or property recovered under section 553 of this title, may be preserved for the benefit of the debtor to the extent that the debtor may exempt such property under subsection (g) of this section or paragraph (1) of this subsection.

(j) Notwithstanding subsections (g) and (i) of this section, the debtor may exempt a particular kind of property under subsections (g) and (i) of this section only to the extent that the debtor has exempted less property in value of such kind than that to which the debtor is entitled under subsection (b) of this section.

(k) Property that the debtor exempts under this section is not liable for payment of any administrative expense except—

(1) the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of

recovery of such property, that is attributable to the value of the portion of such property exempted in relation to the value of the property recovered; and

(2) any costs and expenses of avoiding a transfer under subsection (f) or (h) of this section, or of recovery of property under subsection (i)(1) of this section, that the debtor has not paid.

(l) The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

(m) Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2586; Pub.L. 98-353, Title III, §§ 306, 453, July 10, 1984, 98 Stat. 353, 375; Pub.L. 99-554, Title II, § 283(i), Oct. 27, 1986, 100 Stat. 3117; Pub.L. 101-647, Title XXV, § 2522(b), Nov. 29, 1990, 104 Stat. 4866; Pub.L. 103-394, Title I, § 108(d), Title III, §§ 303, 304(d), 310, Title V, § 501(d), October 22, 1994, 108 Stat. 4112, 4132, 4133, 4137, 4145; Pub.L. 106-420, § 4, Nov. 1, 2000, 114 Stat. 1868.

Historical and Revision Notes

1978 Acts. Subsection (a) of this section defines two terms: “dependent” includes the debtor’s spouse, whether or not actually dependent; and “value” means fair market value as of the date of the filing of the petition.

Subsection (b) tracks current law. It permits a debtor the exemptions to which he is entitled under other Federal law and the law of the State of his domicile. Some of the items that may be exempted under Federal laws other than title 11 include:

Foreign Service Retirement and Disability payments, 22 U.S.C. 1104¹ [section 1104 of Title 22, Foreign Relations and Inter-course];

Social security payments, 42 U.S.C. 407 [section 407 of Title 42, The Public Health and Welfare];

Injury or death compensation payments from war risk hazards, 42 U.S.C. 1717 [section 1717 of Title 42];

Wages of fishermen, seamen, and apprentices, 46 U.S.C. 601² [section 601 of Title 46, Shipping];

Civil service retirement benefits, 5 U.S.C. 729, 2265³ [sections 729 and 2265 of Title 5, Government Organization and Employees];

Longshoremen’s and Harbor Workers’ Compensation Act death and disability benefits, 33 U.S.C. 916 [section 916 of Title 33, Navigation and Navigable Waters];

Railroad Retirement Act annuities and pensions, 45 U.S.C. 228(L)⁴ [former section 2281 of Title 45, Railroads];

Veterans benefits, 45 U.S.C. 352(E)⁵ [section 352(e) of Title 45];

Special pensions paid to winners of the Congressional Medal of Honor, 38 U.S.C. 3101⁶ [section 3101 of Title 38, Veterans’ Benefits]; and

Federal homestead lands on debts contracted before issuance of the patent, 43 U.S.C. 175 [section 175 of Title 43, Public Lands].

He may also exempt an interest in property in which the debtor had an interest as a tenant by the entirety or joint tenant to the extent that interest would have been exempt from process under applicable nonbankruptcy law.

Under proposed section 541, all property of the debtor becomes property of the estate, but the debtor is permitted to exempt certain property from property of the estate under this section. Property may be exempted even if it is subject to a lien, but only the unencumbered

portion of the property is to be counted in computing the "value" of the property for the purposes of exemption.

As under current law, the debtor will be permitted to convert nonexempt property into exempt property before filing a bankruptcy petition. The practice is not fraudulent as to creditors, and permits the debtor to make full use of the exemptions to which he is entitled under the law. [Ed. Note: cf. *Mickelson v. Anderson*, Bkrcty.Minn.1982, 31 B.R. 635.]

Subsection (c) insulates exempt property from prepetition claims other than tax claims (whether or not dischargeable), and other than alimony, maintenance, or support claims that are excepted from discharge. The bankruptcy discharge does not prevent enforcement of valid liens. The rule of *Long v. Bullard*, 117 U.S. 617 (1886) [6 S.Ct. 917, 29 L.Ed. 1004], is accepted with respect to the enforcement of valid liens on nonexempt property as well as on exempt property. Cf. *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 583 (1935) [55 S.Ct. 854].

Subsection (c)(3) permits the collection of dischargeable taxes from exempt assets. Only assets exempted from levy under section 6334 of the Internal Revenue Code [section 6334 of Title 26, Internal Revenue Code] or under applicable state or local tax law cannot be applied to satisfy these tax claims. This rule applies to prepetition tax claims against the debtor regardless of whether the claims do or do not receive priority and whether they are dischargeable or nondischargeable. Thus, even if a tax is dischargeable vis-a-vis the debtor's after-acquired assets, it may nevertheless be collectible from exempt property held by the estate. (Taxes incurred by the debtor's estate which are collectible as first priority administrative expenses are not collectible from the debtor's estate which are collectible as first priority administrative expenses are not collectible from the debtor's exempt assets.)

Subsection (d) protects the debtor's exemptions, either Federal or State, by making unenforceable in a bankruptcy case a waiver of exemptions or a waiver of the debtor's avoiding powers under the following subsections.

Subsection (e) protects the debtor's exemptions, his discharge, and thus his fresh start by permitting him to avoid certain liens on exempt property. The debtor may avoid a judicial lien on any property to the extent that the property could have been exempted in the absence of the lien, and may similarly avoid a

nonpurchase-money security interest in certain household and personal goods. The avoiding power is independent of any waiver of exemptions.

Subsection (f) gives the debtor the ability to exempt property that the trustee recovers under one of the trustee's avoiding powers if the property was involuntarily transferred away from the debtor (such as by the fixing of a judicial lien) and if the debtor did not conceal the property. The debtor is also permitted to exempt property that the trustee recovers as the result of the avoiding of the fixing of certain security interests to the extent that the debtor could otherwise have exempted the property.

Subsection (g) provides that if the trustee does not exercise an avoiding power to recover a transfer of property that would be exempt, the debtor may exercise it and exempt the property, if the transfer was involuntary and the debtor did not conceal the property. If the debtor wishes to preserve his right to pursue any action under this provision, then he must intervene in any action brought by the trustee based on the same cause of action. It is not intended that the debtor be given an additional opportunity to avoid a transfer or that the transferee should have to defend the same action twice. Rather, the section is primarily designed to give the debtor the rights the trustee could have, but has not, pursued. The debtor is given no greater rights under this provision than the trustee, and thus, the debtor's avoiding powers under proposed sections 544, 545, 547, and 548, are subject to proposed 546, as are the trustee's powers.

These subsections are cumulative. The debtor is not required to choose which he will use to gain an exemption. Instead, he may use more than one in any particular instance, just as the trustee's avoiding powers are cumulative.

Subsection (h) permits recovery by the debtor of property transferred by an avoided transfer from either the initial or subsequent transferees. It also permits preserving a transfer for the benefit of the debtor. In either event, the debtor may exempt the property recovered or preserved.

Subsection (i) makes clear that the debtor may exempt property under the avoiding subsections (f) and (h) only to the extent he has exempted less property than allowed under subsection (b).

Subsection (j) makes clear that the liability of the debtor's exempt property is limited to the debtor's aliquot share of the costs and expenses recovery of property that the trustee recovers and the debtor later exempts, and any costs and expenses of avoiding a transfer by the debtor that the debtor has not already paid.

Subsection (k) requires the debtor to file a list of property that he claims as exempt from property of the estate. Absent an objection to the list, the property is exempted. A dependent of the debtor may file it and thus be protected if the debtor fails to file the list.

Subsection (l) provides the rule for a joint case. Senate Report No. 95-989.

1. Replaced by 22 USCA § 4060(c).
2. Replaced by 46 USCA §§ 11108, 11109.
3. Replaced by 5 USCA § 8346.
4. Replaced by 45 USCA § 231m.
5. Railroad unemployment benefits are covered by 45 USCA § 352(e).
6. Veterans benefits generally are covered by 38 USCA § 5301.

Subsection (a) of this section defines two terms: "dependent" includes the debtor's spouse, whether or not actually dependent; and "value" means fair market value as of the date of the filing of the petition.

Subsection (b), the operative subsection of this section, is a significant departure from present law. It permits an individual debtor in a bankruptcy case a choice between exemption systems. The debtor may choose the Federal exemptions prescribed in subsection (d), or he may choose the exemptions to which he is entitled under other Federal law and the law of the State of his domicile. If the debtor chooses the latter, some of the items that may be exempted under other Federal laws include:

- Foreign Service Retirement and Disability payments, 22 U.S.C. 1104¹ [section 1104 of Title 22, Foreign Relations and Intercourse];
- Social security payments, 42 U.S.C. 407 [section 407 of Title 42, The Public Health and Welfare];
- Injury or death compensation payments from war risk hazards, 42 U.S.C. 1717 [section 1717 of Title 42];
- Wages of fishermen, seamen, and apprentices, 46 U.S.C. 601 [section 601 of Title 46, Shipping];

— Civil service retirement benefits, 5 U.S.C. 729, 2265² [sections 729, 2265 of Title 5, Government Organization and Employees];

— Longshoremen's and Harbor Workers' Compensation Act death and disability benefits, 33 U.S.C. 916 [section 916 of Title 33, Navigation and Navigable Waters];

— Railroad Retirement Act annuities and pensions, 45 U.S.C. 228(l)³; [former section 228l of Title 45, Railroads];

— Veterans benefits, 45 U.S.C. 352(E)⁴ [section 352(e) of Title 45];

— Special pensions paid to winners of the Congressional Medal of Honor, 38 U.S.C. 3101 [section 3101 of Title 38, Veterans' Benefits];⁵ and

— Federal homestead lands on debts contracted before issuance of the patent, 43 U.S.C. 175 [section 175 of Title 43, Public Lands].

He may also exempt an interest in property in which the debtor had an interest as a tenant by the entirety or joint tenant to the extent that interest would have been exempt from process under applicable nonbankruptcy law. The Rules will provide for the situation where the debtor's choice of exemption, Federal or State, was improvident and should be changed, for example, where the court has ruled against the debtor with respect to a major exemption.

Under proposed 11 U.S.C. 541, all property of the debtor becomes property of the estate, but the debtor is permitted to exempt certain property from property of the estate under this section. Property may be exempted even if it is subject to a lien, but only the unencumbered portion of the property is to be counted in computing the "value" of the property for the purposes of exemption. Thus, for example, a residence worth \$30,000 with a mortgage of \$25,000 will be exemptable to the extent of \$5,000. This follows current law. The remaining value of the property will be dealt with in the bankruptcy case as is any interest in property that is subject to a lien.

As under current law, the debtor will be permitted to convert nonexempt property into exempt property before filing a bankruptcy petition. See Hearings, pt. 3, at 1355-58. The practice is not fraudulent as to creditors and permits the debtor to make full use of the exemptions to which he is entitled under the law.

Subsection (c) insulates exempt property from prepetition claims, except tax and alimony, maintenance, or support claims that are excepted from discharge. The bankruptcy discharge will not prevent enforcement of valid liens. The rule of *Long v. Bullard*, 117 U.S. 617 (1886) [6 S.Ct. 917, 29 L.Ed. 1004], is accepted with respect to the enforcement of valid liens on nonexempt property as well as on exempt property. Cf. *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 583 (1935) [55 S.Ct. 854].

Subsection (d) specifies the Federal exemptions to which the debtor is entitled. They are derived in large part from the Uniform Exemptions Act, promulgated by the Commissioners of Uniform State Laws in August, 1976. Eleven categories of property are exempted. First is a homestead to the extent of \$10,000, which may be claimed in real or personal property that the debtor or a dependent of the debtor uses as a residence. Second, the debtor may exempt a motor vehicle to the extent of \$1500. Third, the debtor may exempt household goods, furnishings, clothing, and similar household items, held primarily for the personal, family, or household use of the debtor or a dependent of the debtor. "Animals" includes all animals, such as pets, livestock, poultry, and fish, if they are held primarily for personal, family or household use. The limitation for third category items is \$300 on any particular item. The debtor may also exempt up to \$750 of personal jewelry.

Paragraph (5) permits the exemption of \$500, plus any unused amount of the homestead exemption, in any property, in order not to discriminate against the nonhomeowner. Paragraph (6) grants the debtor up to \$1000 in implements, professional books, or tools, of the trade of the debtor a dependent. Paragraph (7) exempts a life insurance contract, other than a credit life insurance contract, owned by the debtor. This paragraph refers to the life insurance contract itself. It does not encompass any other rights under the contract, such as the right to borrow out the loan value. Because of this provision, the trustee may not surrender a life insurance contract, which remains property of the debtor if he chooses the Federal exemptions. Paragraph (8) permits the debtor to exempt up to \$5000 in loan value in a life insurance policy owned by the debtor under which the debtor or an individual of whom the debtor is a dependent is the insured. The exemption provided by this paragraph and paragraph (7) will also include the debtor's rights in a group

insurance certificate under which the insured is an individual of whom the debtor is a dependent (assuming the debtor has rights in the policy that could be exempted) or the debtor. A trustee is authorized to collect the entire loan value on every life insurance policy owned by the debtor as property of the estate. First, however, the debtor will choose which policy or policies under which the loan value will be exempted. The \$5000 figure is reduced by the amount of any automatic premium loan authorized after the date of the filing of the petition under section 542(d). Paragraph (9) exempts professionally prescribed health aids.

Paragraph (10) exempts certain benefits that are akin to future earnings of the debtor. These include social security, unemployment compensation, or public assistance benefits, veteran's benefits, disability, illness, or unemployment benefits, alimony, support, or separate maintenance (but only to the extent reasonably necessary for the support of the debtor and any dependents of the debtor), and benefits under a certain stock bonus, pension, profitsharing, annuity or similar plan based on illness, disability, death, age or length of service. Paragraph (11) allows the debtor to exempt certain compensation for losses. These include crime victim's reparation benefits, wrongful death benefits (with a reasonably necessary for support limitation), life insurance proceeds (same limitation), compensation for bodily injury, not including pain and suffering (\$10,000 limitation), and loss of future earnings payments (support limitation). This provision in subparagraph (D)(11) is designed to cover payments in compensation of actual bodily injury, such as the loss of a limb, and is not intended to include the attendant costs that accompany such a loss, such as medical payments, pain and suffering, or loss of earnings. Those items are handled separately by the bill.

Subsection (e) protects the debtor's exemptions, either Federal or State, by making unenforceable in a bankruptcy case a waiver of exemptions or a waiver of the debtor's avoiding powers under the following subsections.

Subsection (f) protects the debtor's exemptions, his discharge, and thus his fresh start by permitting him to avoid certain liens on exempt property. The debtor may avoid a judicial lien on any property to the extent that the property could have been exempted in the absence of the lien, and may similarly avoid a nonpurchase-money security interest in certain household and personal goods. The avoiding

power is independent of any waiver of exemptions.

Subsection (g) gives the debtor the ability to exempt property that the trustee recovers under one of the trustee's avoiding powers if the property was involuntarily transferred away from the debtor (such as by the fixing of a judicial lien) and if the debtor did not conceal the property. The debtor is also permitted to exempt property that the trustee recovers as the result of the avoiding of the fixing of certain security interests to the extent that the debtor could otherwise have exempted the property.

If the trustee does not pursue an avoiding power to recover a transfer of property that would be exempt, the debtor may pursue it and exempt the property, if the transfer was involuntary and the debtor did not conceal the property. If the debtor wishes to preserve his right to pursue an action under this provision, then he must intervene in any action brought by the trustee based on the same cause of action. It is not intended that the debtor be given an additional opportunity to avoid a transfer or that the transferee have to defend the same action twice. Rather, the section is primarily designed to give the debtor the rights the trustee could have pursued if the trustee chooses not to pursue them. The debtor is given no greater rights under this provision than the trustee, and thus the debtor's avoiding powers under proposed 11 U.S.C. 544, 545, 547, and 548, are subject to proposed 11 U.S.C. 546, as are the trustee's powers.

These subsections are cumulative. The debtor is not required to choose which he will use to gain an exemption. Instead, he may use more than one in any particular instance, just as the trustee's avoiding powers are cumulative.

Subsection (i) permits recovery by the debtor of property transferred in an avoided transfer from either the initial or subsequent transferees. It also permits preserving a transfer for the benefit of the debtor. Under either case the debtor may exempt the property recovered or preserved.

Subsection (k) makes clear that the debtor's aliquot share of the costs and expenses [for] recovery of property that the trustee recovers and the debtor later exempts, and any costs and expenses of avoiding a transfer by the debtor that the debtor has not already paid.

Subsection (l) requires the debtor to file a list of property that he claims as exempt from

property of the estate. Absent an objection to the list, the property is exempted. A dependent of the debtor may file it and thus be protected if the debtor fails to file the list.

Subsection (m) requires the clerk of the bankruptcy court to give notice of any exemptions claimed under subsection (l), in order that parties in interest may have an opportunity to object to the claim.

Subsection (n) provides the rule for a joint case: each debtor is entitled to the Federal exemptions provided under this section or to the State exemptions, whichever the debtor chooses. House Report 95-595.

1. Replaced by 22 USCA § 4060(c).

2. Replaced by 5 USCA § 8346.

3. Replaced by 45 USCA § 231m.

4. Railroad unemployment benefits are covered by 45 USCA § 352(e).

5. Veteran benefits generally are covered by 38 USCA § 5301.

1984 Acts. Statements by Legislative Leaders, see 1984 U.S. Code Cong. and Adm. News, p. 576.

1986 Acts. House Report No. 99-764 and House Conference Report No. 99-958, see 1986 U.S. Code Cong. and Adm. News, p. 5227.

House Conference Report No. 99-841 and Statement by President, see 1986 U.S. Code Cong. and Adm. News, p. 4075.

1990 Acts. House Report No. 101-681(1), see 1990 U.S. Code Cong. and Adm. News, p. 6472.

1994 Acts. House Report No. 103-835, see 1994 U.S. Code Cong. and Adm. News, p. 3340.

Legislative Statements. Section 522 of the House amendment represents a compromise on the issue of exemptions between the position taken in the House bill, and that taken in the Senate amendment. Dollar amounts specified in section 522(d) of the House bill have been reduced from amounts as contained in H.R. 8200 as passed by the House. The States may, by passing a law, determine whether the Federal exemptions will apply as an alternative to State exemptions in bankruptcy cases.

Section 522(c)(1) tracks the House bill and provides that dischargeable tax claims may not be collected out of exempt property.

Section 522(f)(2) is derived from the Senate amendment restricting the debtor to avoidance of nonpossessory, nonpurchase money security interests.

Exemptions: Section 522(c)(1) of the House amendment adopts a provision contained in the House bill that dischargeable taxes cannot be collected from exempt assets. This changes present law, which allows collection of dischargeable taxes from exempt property, a rule followed in the Senate amendment. Nondischargeable taxes, however, will continue to the [be] collectable [sic] out of exempt property. It is anticipated that in the next session Congress will review the exemptions from levy currently contained in the Internal Revenue Code [Title 26] with a view to increasing the exemptions to more realistic levels.

References in Text. The Federal Rules of Bankruptcy Procedure, referred to in subsec. (b), are set out in this title.

The Internal Revenue Code of 1986, referred to in subsec. (d)(10)(E)(iii), is classified to Title 26, Internal Revenue Code.

Codifications. Section 501(d)(12)(B)(ii) of Pub.L. 103-394, which directed the amendment of subsec. (d)(10)(E)(iii) of this section by substituting "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409)", was executed by substituting "Internal Revenue Code of 1986" for "Internal Revenue Code of 1986 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409)", as the probable intent of Congress.

Amendments

2000 Amendments. Subsec. (c). Pub.L. 106-420, § 4, struck out "or" at the end of par. (2), substituted "; or" for the period at the end of par. (3), and added par. (4).

1994 Amendments. Subsec. (b). Pub.L. 103-394, § 501(d)(12)(A), substituted "Federal Rules of Bankruptcy Procedure" for "Bankruptcy Rules".

Subsec. (d)(1). Pub.L. 103-394, § 108(d)(1), increased the debtor's aggregate interest exemption from \$7,500 to \$15,000.

Subsec. (d)(2). Pub.L. 103-394, § 108(d)(2), increased the exemption for the debtor's interest in one motor vehicle from \$1,200 to \$2,400.

Subsec. (d)(3). Pub.L. 103-394, § 108(d)(3), substituted "The debtor's interest, not to exceed \$400 in value in any particular item or \$8,000 in aggregate value," for "The debtor's interest, not to exceed \$200 in value in any particular item or \$4,000 in aggregate value,".

Subsec. (d)(4). Pub.L. 103-394, § 108(d)(4), increased the exemption for the debtor's aggregate interest in jewelry from \$500 to \$1,000.

Subsec. (d)(5). Pub.L. 103-394, § 108(d)(5), substituted "aggregate interest in any property, not to exceed in value \$800 plus up to \$7,500" for "aggregate interest in any property, not to exceed in value \$400 plus up to \$3,750".

Subsec. (d)(6). Pub.L. 103-394, § 108(d)(6), increased the exemption for the debtor's aggregate interest in any implements, professional books or tools, of the trade from \$750 to \$1,500.

Subsec. (d)(8). Pub.L. 103-394, § 108 (d)(7), increased the debtor's aggregate interest exemption from \$4,000 to \$8,000.

Subsec. (d)(10)(E)(iii). Pub.L. 103-394, § 501(d)(12)(B)(i), substituted "or 408 of" for "408, or 409 of".

Subsec. (d)(11)(D). Pub.L. 103-394, § 108(d)(8), increased the exemption for the debtor's right to receive, or property that is traceable to, a payment on account of personal bodily injury from \$7,500 to \$15,000.

Subsec. (f)(1)(A). Pub.L. 103-394, § 304(d), added provisions excluding a judicial lien that secures to a specified extent a debt in connection with a separation agreement, divorce decree, or property settlement agreement.

Subsec. (f)(1). Pub.L. 103-394, § 303(1)-(3), designated existing text in entirety as par. (1), redesignated former pars. (1) and (2) as par. (1), subpars. (A) and (B) and former par. (2), subpars. (A) to (C) as par. (1), subpar. (B), cls. (i) to (iii).

Pub.L. 103-394, § 310(1), inserted "but subject to paragraph (3)" after "waiver of exemptions".

Subsec. (f)(2). Pub.L. 103-394, § 303(1)(B), (4), added par. (2) and redesignated former par. (2) as par. (1), subpar. (B).

Subsec. (f)(3). Pub.L. 103-394, § 310(2), added par. (3).

1990 Amendments. Subsec. (c)(3). Pub.L. 101-647 added par. (3).

1986 Amendments. Subsec. (d)(10)(E)(iii). Pub.L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (h)(1). Pub.L. 99-554, § 283(i)(1), substituted "553 of this title" for "553 of this title".

Subsec. (i)(2). Pub.L. 99-554, § 283(i)(2), substituted "(g) of this section" for "(g) of his section".

1984 Amendments. Subsec. (a)(2). Pub.L. 98-353, § 453(a), added "or, with respect to property that becomes property of an estate after such date, as of the date such property becomes property of the estate" following "petition".

Subsec. (b). Pub.L. 98-353, § 306(a), added provision that in joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Bankruptcy Rules, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection, but that if the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed.

Subsec. (c). Pub.L. 98-353, § 453(b), substituted "Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

"(1) a debt of a kind specified in section 523(a)(1) or 523(a)(5) of this title; or

"(2) a debt secured by a lien that is—

"(A)(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and

"(ii) not void under section 506(d) of this title; or

"(B) a tax lien, notice of which is properly filed." for "Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, except—

"(1) a debt of a kind specified in section 523(a)(1) or section 523(a)(5) of this title; or

"(2) a lien that is—

"(A) not avoided under section 544, 545, 547, 548, 549, or 724(a) of this title;

"(B) not voided under section 506(d) of this title; or

"(C)(i) a tax lien, notice of which is properly filed; and

"(ii) avoided under section 545(2) of this title."

Subsec. (d)(3). Pub.L. 98-353, § 306(b), added "or \$4,000 in aggregate value" following "item".

Subsec. (d)(5). Pub.L. 98-353, § 306(c), substituted "The debtor's aggregate interest in any property, not to exceed in value \$400 plus up to \$3,750 of any unused amount of the exemption provided under paragraph (1) of this subsection" for "The debtor's aggregate interest, not to exceed in value \$400 plus any unused amount of the exemption provided under paragraph (1) of this subsection, in any property".

Subsec. (e). Pub.L. 98-353, § 453(c), substituted "an exemption" for "exemptions".

Subsec. (m). Pub.L. 98-353, § 306(d), substituted "Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case" for "This section shall apply separately with respect to each debtor in a joint case".

Effective Dates

1994 Acts. Amendments by Pub.L. 103-394 effective on Oct. 22, 1994, and not to apply with respect to cases commenced under Title 11 of the United States Code before Oct. 22, 1994, see section 702 of Pub.L. 103-394.

1986 Acts. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

1984 Acts. Amendment by Pub.L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a), formerly 553(a) of Pub.L. 98-353.

Separability of Provisions. If any provision of or amendment made by Pub.L. 103-394 or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remaining provisions of and amendments made by Pub.L. 103-394 and the application of such provisions and amendments to any person or circumstance shall not be affected thereby, see section 701 of Pub.L. 103-394.

Cross References

Allowance of claims or interests, see section 502.

Automatic preservation of avoided transfer, see section 551.

Effect of dismissal, see section 349.

Insolvent as meaning financial condition wherein entity's debts are greater than entity's property exclusive of property that may be exempted under this section, see section 101.

Provisions in plan for use, sale or lease of exempt property, see section 1123.

Redemption, see section 722.

Turnover of property to estate, see section 542.

Library References:

C.J.S. Bankruptcy §§ 110, 172 et seq.

West's Key No. Digests, Bankruptcy ¶2761-2802.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 523. Exceptions to discharge

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(1) for a tax or a customs duty—

(A) of the kind and for the periods specified in section 507(a)(2) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, if required—

(i) was not filed; or

(ii) was filed after the date on which such return was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(B) use of a statement in writing—

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive; or

(C) for purposes of subparagraph (A) of this paragraph, consumer debts owed to a single creditor and aggregating more than \$1,075 for

Florida Exemptions

1. Homestead (up to 160 acres outside municipality)
2. Life insurance (no caps on cash surrender)
3. wages for head of household
4. annuities, no cap
5. \$1000 personal property
6. \$1000 for car
7. pension plans
8. IRA (no cap)
9. unemployment benefits
10. disability, college funds, retirement, medical savings accts, child support & alimony

523(a)(6) willful & malicious injury — need intent to create particular injury or knew of consequences

of first scheduled 341 meeting

“luxury goods or services” incurred by an individual debtor on or within 60 days before the order for relief under this title, or cash advances aggregating more than \$1,075 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 60 days before the order for relief under this title, are presumed to be nondischargeable; “luxury goods or services” do not include goods or services reasonably acquired for the support or maintenance of the debtor or a dependent of the debtor; an extension of consumer credit under an open end credit plan is to be defined for purposes of this subparagraph as it is defined in the Consumer Credit Protection Act;

(3) neither listed nor scheduled under section 521(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that—

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); or

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support;

✓ (6) for willful and malicious injury by the debtor to another entity or to the property of another entity;

(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty—

(A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or

(B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;

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(8) for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents;

(9) for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

(10) that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a)(2), (3), (4), (5), (6), or (7) of this title, or under section 14c(1), (2), (3), (4), (6), or (7) of such Act;

(11) provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository institutions regulatory agency, or contained in any settlement agreement entered into by the debtor, arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union;

(12) for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency; or

(13) for any payment of an order of restitution issued under title 18, United States Code;

(14) incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);

(15) not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit unless—

(A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or

(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor;

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a dwelling unit that has condominium ownership or in a share of a coopera-

tive housing corporation, but only if such fee or assessment is payable for a period during which—

(A) the debtor physically occupied a dwelling unit in the condominium or cooperative project; or

(B) the debtor rented the dwelling unit to a tenant and received payments from the tenant for such period,

but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;

(17) for a fee imposed by a court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under section 1915(b) or (f) of title 28, or the debtor's status as a prisoner, as defined in section 1915(h) of title 28; or

(18) owed under State law to a State or municipality that is—

(A) in the nature of support, and

(B) enforceable under part D of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

(b) Notwithstanding subsection (a) of this section, a debt that was excepted from discharge under subsection (a)(1), (a)(3), or (a)(8) of this section, under section 17a(1), 17a(3), or 17a(5) of the Bankruptcy Act, under section 439A of the Higher Education Act of 1965, or under section 733(g) of the Public Health Service Act in a prior case concerning the debtor under this title, or under the Bankruptcy Act, is dischargeable in a case under this title unless, by the terms of subsection (a) of this section, such debt is not dischargeable in the case under this title.

(c)(1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), (6), or (15) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), (6), or (15), as the case may be, of subsection (a) of this section.

(2) Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory agency acting in its corporate capacity as a successor to such receiver, conservator, or liquidating agent to reasonably comply, with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.

(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor

was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

(e) Any institution-affiliated party of a insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2590; Pub.L. 96-56, § 3, Aug. 14, 1979, 93 Stat. 387; Pub.L. 97-35, Title XXIII, § 2334(b), Aug. 13, 1981, 95 Stat. 863; Pub.L. 98-353, Title III, §§ 307, 371, 454, July 10, 1984, 98 Stat. 353, 364, 375; Pub.L. 99-554, Title II, §§ 257(n), 281, 283(j), Oct. 27, 1986, 100 Stat. 3115-3117; Pub.L. 101-581, § 2(a), Nov. 15, 1990, 104 Stat. 2865; Pub.L. 101-647, Title XXV, § 2522(a), Title XXXI, § 3102, Title XXXVI, § 3621, Nov. 29, 1990, 104 Stat. 4865, 4866, 4916, 4964, 4965; Pub.L. 103-322, § 320934, Sept. 13, 1994, 108 Stat. 1796, 2135; Pub.L. 103-394, Title II, § 221, Title III, §§ 304(e), (h), 306, 309, Title V, § 501(d), October 22, 1994, 108 Stat. 4129, 4133-4135, 4137, 4145; Pub.L. 104-134, Title I, § 101(a)[Title VIII, § 804(b)], April 26, 1996, 110 Stat. 1321; renumbered Title I, Pub.L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327, and amended Pub.L. 104-193, Title III, § 374(a), August 22, 1996, 110 Stat. 2105, 2255; Pub.L. 105-244, Title IX, § 971(a), October 7, 1998, 112 Stat. 1581.

Historical and Revision Notes

1978 Acts. This section specifies which of the debtor's debts are not discharged in a bankruptcy case, and certain procedures for effectuating the section. The provision in Bankruptcy Act § 17c [section § 35(c) of former Title 11] granting the bankruptcy courts jurisdiction to determine dischargeability is deleted as unnecessary, in view of the comprehensive grant of jurisdiction prescribed in proposed 28 U.S.C. 1334(b), which is adequate to cover the full jurisdiction that the bankruptcy courts have today over dischargeability and related issues under Bankruptcy Act § 17c [section 35(c) of former Title 11]. The Rules of Bankruptcy Procedure will specify, as they do today, who may request determinations of dischargeability, subject, of course, to proposed 11 U.S.C. 523(c), and when such a request may be made. Proposed 11 U.S.C. 350, providing for reopening of cases, provides one possible procedure for a determination of dischargeability and related issues after a case is closed.

Subsection (a) lists nine kinds of debts excepted from discharge. Taxes that are excepted from discharge are set forth in paragraph (1). These include claims against the debtor which receive priority in the second, third and sixth categories (§ 507(a)(3)(B) and (C) and (6)). These categories include taxes for which the tax authority failed to file a claim against the estate or filed its claim late. Whether or not the taxing authority's claim is secured will also not affect the claim's nondischargeability if the

tax liability in question is otherwise entitled to priority.

Also included in the nondischargeable debts are taxes for which the debtor had not filed a required return as of the petition date, or for which a return had been filed beyond its last permitted due date (§ 523(a)(1)(B)). For this purpose, the date of the tax year to which the return relates is immaterial. The late return rule applies, however, only to the late returns filed within three years before the petition was filed, and to late returns filed after the petition in title 11 was filed. For this purpose, the taxable year in question need not be one or more of the three years immediately preceding the filing of the petition.

Tax claims with respect to which the debtor filed a fraudulent return, entry or invoice, or fraudulently attempted to evade or defeat any tax (§ 523(a)(1)(C)) are included. The date of the taxable year with regard to which the fraud occurred is immaterial.

Also included are tax payments due under an agreement for deferred payment of taxes, which a debtor had entered into with the Internal Revenue Service (or State or local tax authority) before the filing of the petition and which relate to a prepetition tax liability (§ 523(a)(1)(D)) are also nondischargeable. This classification applies only to tax claims which would have received priority under section 507(a) if the taxpayer had filed a title 11

petition on the date on which the deferred payment agreement was entered into. This rule also applies only to installment payments which become due during and after the commencement of the title 11 case. Payments which had become due within one year before the filing of the petition receive sixth priority, and will be nondischargeable under the general rule of section 523(a)(1)(A).

The above categories of nondischargeability apply to customs duties as well as to taxes.

Paragraph (2) provides that as under Bankruptcy Act § 17a(2) [section 35(a)(2) of former Title 11], a debt for obtaining money, property, services, or a refinancing extension or renewal of credit by false pretenses, a false representation, or actual fraud, or by use of a statement in writing respecting the debtor's financial condition that is materially false, on which the creditor reasonably relied, and which the debtor made or published with intent to deceive, is excepted from discharge. This provision is modified only slightly from current section 17a(2) [section 35(a)(2) of former Title 11]. First, "actual fraud" is added as a ground for exception from discharge. Second, the creditor must not only have relied on a false statement in writing, but the reliance must have been reasonable. This codifies case law construing present section 17a(2) [section 35(a)(2) of former Title 11]. Third, the phrase "in any manner whatsoever" that appears in current law after "made or published" is deleted as unnecessary, the word "published" is used in the same sense that it is used in defamation cases.

Unscheduled debts are excepted from discharge under paragraph (3). The provision, derived from section 17a(3) [section 35(a)(3) of former Title 11], follows current law, but clarifies some uncertainties generated by the case law construing 17a(3) [section 35(a)(3) of former Title 11]. The debt is excepted from discharge if it was not scheduled in time to permit timely action by the creditor to protect his rights, unless the creditor had notice or actual knowledge of the case.

Paragraph (4) excepts debts for fraud incurred by the debtor while acting in a fiduciary capacity or for defalcation, embezzlement, or misappropriation.

Paragraph (5) provides that debts for willful and malicious conversion or injury by the debtor to another entity or the property of another entity are nondischargeable. Under this paragraph "willful" means deliberate or intentional. To the extent that *Tinker v. Colwell*, 139

U.S. 473 (1902) [24 S.Ct. 505, 48 L.Ed. 754, 11 Am.Bankr.Rep. 568], held that a less strict standard is intended, and to the extent that other cases have relied on *Tinker* to apply a "reckless disregard" standard, they are overruled.

Paragraph (6) excepts from discharge debts to a spouse, former spouse, or child of the debtor for alimony to, maintenance for, or support of the spouse or child. This language, in combination with the repeal of section 456(b) of the Social Security Act (42 U.S.C. 656(b)) [section 656(b) of Title 42, The Public Health and Welfare] by section 326 of the bill, will apply to make nondischargeable only alimony, maintenance, or support owed directly to a spouse or dependent. What constitutes alimony, maintenance, or support, will be determined under the bankruptcy law, not State law. Thus, cases such as *In re Waller*, 494 F.2d 447 (6th Cir. 1974), are overruled, and the result in cases such as *Fife v. Fife*, 1 Utah 2d 281, 265 P.2d 642 (1952) is followed. The proviso, however, makes nondischargeable any debts resulting from an agreement by the debtor to hold the debtor's spouse harmless on joint debts, to the extent that the agreement is in payment of alimony, maintenance, or support of the spouse, as determined under bankruptcy law considerations as to whether a particular agreement to pay money to a spouse is actually alimony or a property settlement.

Paragraph (7) makes nondischargeable certain liabilities for penalties including tax penalties if the underlying tax with respect to which the penalty was imposed is also nondischargeable (sec. 523(a)(7)). These latter liabilities cover those which, but are penal in nature, as distinct from so-called "pecuniary loss" penalties which, in the case of taxes, involve basically the collection of a tax under the label of a "penalty." This provision differs from the bill as introduced, which did not link the nondischarge of a tax penalty with the treatment of the underlying tax. The amended provision reflects the existing position of the Internal Revenue Service as to tax penalties imposed by the Internal Revenue Code [Title 26] (Rev.Rul. 68-574, 1968-2 C.B. 595).

Paragraph (8) follows generally current law and excerpts [sic] from discharge student loans until such loans have been due and owing for five years. Such loans include direct student loans as well as insured and guaranteed loans. This provision is intended to be self-executing and the lender or institution is not required to

file a complaint to determine the nondischargeability of any student loan.

Paragraph (9) excepts from discharge debts that the debtor owed before a previous bankruptcy case concerning the debtor in which the debtor was denied a discharge other than on the basis of the six-year bar.

Subsection (b) of this section permits discharge in a bankruptcy case of an unscheduled debt from a prior case. This provision is carried over from Bankruptcy Act § 17b [section 35(b) of former Title 11]. The result dictated by the subsection would probably not be different if the subsection were not included. It is included nevertheless for clarity.

Subsection (c) requires a creditor who is owed a debt that may be excepted from discharge under paragraph (2), (4), or (5), (false statements, defalcation or larceny misappropriation, or willful and malicious injury) to initiate proceedings in the bankruptcy court for an exception to discharge. If the creditor does not act, the debt is discharged. This provision does not change current law.

Subsection (d) is new. It provides protection to a consumer debtor that dealt honestly with a creditor who sought to have a debt excepted from discharge on the ground of falsity in the incurring of the debt. The debtor may be awarded costs and a reasonable attorney's fee for the proceeding to determine the dischargeability of a debt under subsection (a)(2), if the court finds that the proceeding was frivolous or not brought by its creditor in good faith.

The purpose of the provision is to discourage creditors from initiating proceedings to obtaining a false financial statement exception to discharge in the hope of obtaining a settlement from an honest debtor anxious to save attorney's fees. Such practices impair the debtor's fresh start and are contrary to the spirit of the bankruptcy laws. Senate Report 95-989.

Subsection (a) lists eight kinds of debts excepted from discharge. Taxes that are entitled to priority are excepted from discharge under paragraph (1). In addition, taxes with respect to which the debtor made a fraudulent return or willfully attempted to evade or defeat, or with respect to which a return (if required) was not filed or was not filed after the due date and after one year before the bankruptcy case are excepted from discharge. If the taxing authority's claim has been disallowed, then it would be barred by the more modern rules of collateral estoppel from reasserting that claim against the debtor after the case was closed.

See Plumb, *The Tax Recommendations of the Commission on the Bankruptcy Laws: Tax Procedures*, 88 Harv.L.Rev. 1360, 1388 (1975).

As under Bankruptcy Act § 17a(2) [section 35(a)(2) of former Title 11], a debt for obtaining money, property, services, or an extension or renewal of credit by false pretenses, a false representation, or actual fraud, or by use of a statement in writing respecting the debtor's financial condition that is materially false, on which the creditor reasonably relied, and that the debtor made or published with intent to deceive, is excepted from discharge. This provision is modified only slightly from current section 17a(2). First, "actual fraud" is added as a grounds for exception from discharge. Second, the creditor must not only have relied on a false statement in writing, the reliance must have been reasonable. This codifies case law construing this provision. Third, the phrase "in any manner whatsoever" that appears in current law after "made or published" is deleted as unnecessary. The word "published" is used in the same sense that it is used in slander actions.

Unscheduled debts are excepted from discharge under paragraph (3). The provision, derived from section 17a(3) [section 35(a)(3) of former Title 11], follows current law, but clarifies some uncertainties generated by the case law construing 17a(3). The debt is excepted from discharge if it was not scheduled in time to permit timely action by the creditor to protect his rights, unless the creditor had notice or actual knowledge of the case.

Paragraph (4) excepts debts for embezzlement or larceny. The deletion of willful and malicious conversion from § 17a(2) [section 35(a)(2) of former Title 11] of the Bankruptcy Act is not intended to effect a substantive change. The intent is to include in the category of non-dischargeable debts a conversion under which the debtor willfully and maliciously intends to borrow property for a short period of time with no intent to inflict injury but on which injury is in fact inflicted.

Paragraph (5) excepts from discharge debts to a spouse, former spouse, or child of the debtor for alimony to, maintenance for, or support of, the spouse or child. This language, in combination with the repeal of section 456(b) of the Social Security Act (42 U.S.C. 656(b)) [former section 656(b) of Title 42, The Public Health and Welfare] by section 327 of the bill, will apply to make nondischargeable only alimony, maintenance, or support owed directly

to a spouse or dependent. See Hearings, pt. 2, at 942. What constitutes alimony, maintenance, or support, will be determined under the bankruptcy laws, not State law. Thus, cases such as *In re Waller*, 494 F.2d 447 (6th Cir. 1974); Hearings, pt. 3, at 1308–10, are overruled, and the result in cases such as *Fife v. Fife*, 1 Utah 2d 281, 265 P.2d 642 (1952) is followed. This provision will, however, make nondischargeable any debts resulting from an agreement by the debtor to hold the debtor's spouse harmless on joint debts, to the extent that the agreement is in payment of alimony, maintenance, or support of the spouse, as determined under bankruptcy law considerations that are similar to considerations of whether a particular agreement to pay money to a spouse is actually alimony or a property settlement. See Hearings, pt. 3, at 1287–1290.

Paragraph (6) excepts debts for willful and malicious injury by the debtor to another person or to the property of another person. Under this paragraph, “willful” means deliberate or intentional. To the extent that *Tinker v. Colwell*, 193 U.S. 473 (1902) [24 S.Ct. 505, 48 L.Ed. 754, 11 Am.Bankr.Rep. 568], held that a looser standard is intended, and to the extent that other cases have relied on *Tinker* to apply a “reckless disregard” standard, they are overruled.

Paragraph (7) excepts from discharge a debt for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, that is not compensation for actual pecuniary loss.

Paragraph (8) [now (9)] excepts from discharge debts that the debtor owed before a previous bankruptcy case concerning the debtor in which the debtor was denied a discharge other than on the basis of the six-year bar.

Subsection (b) of this section permits discharge in a bankruptcy case of an unscheduled debt from a prior case. This provision is carried over from Bankruptcy Act § 17b (section 35(b) of former Title 11). The result dictated by the subsection would probably not be different if the subsection were not included. It is included nevertheless for clarity.

Subsection (c) requires a creditor who is owed a debt that may be expected from discharge under paragraph (2), (4), or (6) (false statements, embezzlement or larceny, or willful and malicious injury) to initiate proceedings in the bankruptcy court for an exception to discharge. If the creditor does not act, the debt is discharged. This provision does not change current law.

Subsection (d) is new. It provides protection to a consumer debtor that dealt honestly with a creditor who sought to have a debt excepted from discharge on grounds of falsity in the incurring of the debt. The debtor is entitled to costs of and a reasonable attorney's fee for the proceeding to determine the dischargeability of a debt under subsection (a)(2), if the creditor initiated the proceeding and the debt was determined to be dischargeable. The court is permitted to award any actual pecuniary loss that the debtor may have suffered as a result of the proceeding (such as loss of a day's pay). The purpose of the provision is to discourage creditors from initiating false financial statement exception to discharge actions in the hopes of obtaining a settlement from an honest debtor anxious to save attorney's fees. Such practices impair the debtor's fresh start. House Report No. 95–595.

1979 Acts. Senate Report No. 96–230, see 1979 U.S. Code Cong. and Adm. News, p. 936.

1981 Acts. Senate Report No. 97–139 and House Conference Report No. 97–208, see 1981 U.S. Code Cong. and Adm. News, p. 396.

1984 Acts. Statements by Legislative Leaders, see 1984 U.S. Code Cong. and Adm. News, p. 576.

1986 Acts. House Report No. 99–764 and House Conference Report No. 99–958, see 1986 U.S. Code Cong. and Adm. News, p. 5227.

1990 Acts. House Report No. 101–681(Part I), see 1990 U.S. Code Cong. and Adm. News, p. 6472.

Senate Report No. 101–434, see 1990 U.S. Code Cong. and Adm. News, p. 4065.

1994 Acts. House Report Nos. 103–324 and 103–489, and House Conference Report No. 103–711, see 1994 U.S. Code Cong. and Adm. News, p. 1801.

House Report No. 103–835, see 1994 U.S. Code Cong. and Adm. News, p. 3340.

1996 Acts. House Report No. 104–651 and House Conference Report No. 104–725, see 1996 U.S. Code Cong. and Adm. News, p. 2183.

1998 Acts. House Conference Report No. 105–750, see 1998 U.S. Code Cong. and Adm. News, p. 417.

Legislative Statements. Section 523(a)(1) represents a compromise between the position taken in the House bill and the Senate amendment. Section 523(a)(2) likewise represents a compromise between the position taken in the

House bill and the Senate amendment with respect to the false financial statement exception to discharge. In order to clarify that a "renewal of credit" includes a "refinancing of credit", explicit reference to a refinancing of credit is made in the preamble to section 523(a)(2). A renewal of credit or refinancing of credit that was obtained by a false financial statement within the terms of section 523(a)(2) is nondischargeable. However, each of the provisions of section 523(a)(2) must be proved. Thus, under section 523(a)(2)(A) a creditor must prove that the debt was obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition. Subparagraph (A) is intended to codify current case law e.g., *Neal v. Clark*, 95 U.S. 704 (1887) [24 L.Ed. 586], which interprets "fraud" to mean actual or positive fraud rather than fraud implied in law. Subparagraph (A) is mutually exclusive from subparagraph (B). Subparagraph (B) pertains to the so-called false financial statement. In order for the debt to be nondischargeable, the creditor must prove that the debt was obtained by the use of a statement in writing (i) that is materially false; (ii) respecting the debtor's or an insider's financial condition; (iii) on which the creditor to whom the debtor is liable for obtaining money, property, services, or credit reasonably relied; (iv) that the debtor caused to be made or published with intent to deceive. Section 523(a)(2)(B)(iv) is not intended to change from present law since the statement that the debtor causes to be made or published with the intent to deceive automatically includes a statement that the debtor actually makes or publishes with an intent to deceive. Section 523(a)(2)(B) is explained in the House report. Under section 53(a)(2)(B)(i) a discharge is barred only as to that portion of a loan with respect to which a false financial statement is materially false.

In many cases, a creditor is required by state law to refinance existing credit on which there has been no default. If the creditor does not forfeit remedies or otherwise rely to his detriment on a false financial statement with respect to existing credit, then an extension, renewal, or refinancing of such credit is nondischargeable only to the extent of the new money advanced; on the other hand, if an existing loan is in default or the creditor otherwise reasonably relies to his detriment on a false financial statement with regard to an existing loan, then the entire debt is nondischargeable under section 523(a)(2)(B). This codifies the reasoning expressed by the second

circuit in *In re Danns*, 558 F.2d 114 (2d Cir. 1977).

Section 523(a)(3) of the House amendment is derived from the Senate amendment. The provision is intended to overrule *Birkett v. Columbia Bank*, 195 U.S. 345 (1904) [25 S.Ct. 38, 49 L.Ed. 231, 12 Am.Bankr.Rep. 691].

Section 523(a)(4) of the House amendment represents a compromise between the House bill and the Senate amendment.

Section 523(a)(5) is a compromise between the House bill and the Senate amendment. The provision excepts from discharge a debt owed to a spouse, former spouse or child of the debtor, in connection with a separation agreement, divorce decree, or property settlement agreement, for alimony to, maintenance for, or support of such spouse or child but not to the extent that the debt is assigned to another entity. If the debtor has assumed an obligation of the debtor's spouse to a third party in connection with a separation agreement, property settlement agreement, or divorce proceeding, such debt is dischargeable to the extent that payment of the debt by the debtor is not actually in the nature of alimony, maintenance, or support of debtor's spouse, former spouse, or child.

Section 523(a)(6) adopts the position taken in the House bill and rejects the alternative suggested in the Senate amendment. The phrase "willful and malicious injury" covers a willful and malicious conversion.

Section 523(a)(7) of the House amendment adopts the position taken in the Senate amendment and rejects the position taken in the House bill. A penalty relating to a tax cannot be nondischargeable unless the tax itself is nondischargeable.

Section 523(a)(8) represents a compromise between the House bill and the Senate amendment regarding educational loans. This provision is broader than current law which is limited to federally insured loans. Only educational loans owing to a governmental unit or a non-profit institution of higher education are made nondischargeable under this paragraph.

Section 523(b) is new. The section represents a modification of similar provisions contained in the House bill and the Senate amendment.

Section 523(c) of the House amendment adopts the position taken in the Senate amendment.

Section 523(d) represents a compromise between the position taken in the House bill and the Senate amendment on the issue of attorneys' fees in false financial statement complaints to determine dischargeability. The provision contained in the House bill permitting the court to award damages is eliminated. The court must grant the debtor judgment or a reasonable attorneys' fee unless the granting of judgment would be clearly inequitable.

Nondischargeable debts: The House amendment retains the basic categories of nondischargeable tax liabilities contained in both bills, but restricts the time limits on certain nondischargeable taxes. Under the amendment, nondischargeable taxes cover taxes entitled to priority under section 507(a)(6) of title 11 and, in the case of individual debtors under chapters 7, 11, or 13, tax liabilities with respect to which no required return had been filed or as to which a late return had been filed if the return became last due, including extensions, within 2 years before the date of the petition or became due after the petition or as to which the debtor made a fraudulent return, entry or invoice or fraudulently attempted to evade or defeat the tax.

In the case of individuals in liquidation under chapter 7 or in reorganization under chapter 11 of title 11, section 1141(d)(2) incorporates by reference the exceptions to discharge continued in section 523. Different rules concerning the discharge of taxes where a partnership or corporation reorganizes under chapter 11, apply under section 1141.

The House amendment also deletes the reduction rule contained in section 523(e) of the Senate amendment. Under that rule, the amount of an otherwise nondischargeable tax liability would be reduced by the amount which a governmental tax authority could have collected from the debtor's estate if it had filed a timely claim against the estate but which it did not collect because no such claim was filed. This provision is deleted in order not to effectively compel a tax authority to file claim against the estate in "no asset" cases, along with a dischargeability petition. In no-asset cases, therefore, if the tax authority is not potentially penalized by failing to file a claim, the debtor in such cases will have a better opportunity to choose the prepayment forum, bankruptcy court or the Tax Court, in which to litigate his personal liability for a nondischargeable tax.

The House amendment also adopts the Senate amendment provision limiting the nondis-

chargeability of punitive tax penalties, that is, penalties other than those which represent collection of a principal amount of tax liability through the form of a "penalty." Under the House amendment, tax penalties which are basically punitive in nature are to be nondischargeable only if the penalty is computed by reference to a related tax liability which is nondischargeable or, if the amount of the penalty is not computed by reference to a tax liability, the transaction or event giving rise to the penalty occurred during the 3-year period ending on the date of the petition.

References in Text. The Consumer Credit Protection Act, referred to in subsec. (a)(2)(C), is Pub.L. 90-321, May 29, 1968, 82 Stat. 146, as amended, which is classified principally to chapter 41 (section 1601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Social Security Act, referred to in subsec. (a)(5)(A), (18)(B), is Act Aug. 14, 1935, c. 531, 49 Stat. 620, as amended. Section 408(a)(3) of that Act is classified to section 608(a)(3) of Title 42, The Public Health and Welfare. Part D of Title IV of such Act is classified generally to part D (section 651 et seq.) of subchapter IV of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Bankruptcy Act, referred to in subsecs. (a)(10) and (b), is Act July 1, 1898, c. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11. Sections 14c and 17a of the Bankruptcy Act were classified to sections 32(c) and 35(a) of former Title 11.

Section 439A of the Higher Education Act of 1965, referred to in subsec. (b), is section 439A of Pub.L. 89-329, Title IV, as added Pub.L. 94-482, Title I, § 127(a), Oct. 12, 1976, 90 Stat. 2141, which was classified to section 1087-3 of Title 20, Education, and was repealed by Pub.L. 95-598, Title III, § 317, Nov. 6, 1978, 92 Stat. 2678.

Section 733 of the Public Health Service Act, referred to in subsec. (b), is section 733 of Act July 1, 1944, c. 373, Title VII as added Oct. 12, 1976, Pub.L. 94-484, Title IV, § 401(b)(3), 90 Stat. 2262, which was classified to section 294f of Title 42, The Public Health and Welfare, and which was repealed by Pub.L. 95-598, Title III, § 327, Nov. 6, 1978, 92 Stat. 2679. A subsec. (g), containing similar provisions, was

added to section 733 by Pub.L. 97-35, Title XXVII, § 2730, Aug. 13, 1981, 95 Stat. 919. Section 733 was subsequently omitted in the general revision of subchapter V of chapter 6A of Title 42 by Pub.L. 102-408, Title I, § 102, Oct. 13, 1992, 106 Stat. 1992.

Codifications. Amendment by section 304(e) of Pub.L. 103-394, directing the addition of par. (15), was executed by adding par. (15) to subsec. (a), as the probable intent of Congress.

Pub.L. 101-581 and Pub.L. 101-647, § 3102(a), made identical amendments to subsec. (a)(9) of this section. See 1990 Amendments note set out under this section.

Amendment by section 283(j)(1) of Pub.L. 99-554, which redesignated the second par. (9) of subsec. (a) as (10), has been executed by redesignating as (10), par. (9) as enacted by Pub.L. 95-598 as the probable intent of Congress in view of amendment by section 371(2) of Pub.L. 98-353, which directed the addition of par. (9), as presently set out, to follow par. (8).

Amendments

1998 Amendments. Subsec. (a)(8). Pub.L. 105-244, § 971(a), rewrote par. (8), which formerly read:

“(8) for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless—

“(A) such loan, benefit, scholarship, or stipend overpayment first became due more than 7 years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or

“(B) excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor’s dependents;”.

1996 Amendments. Subsec. (a)(5). Pub.L. 104-193, § 374(a)(4), substituted “section 408(a)(3)” for “section 402(a)(26)”.

Subsec. (a)(17). Pub.L. 104-134, § 101[(a)][s 804(b)], added par. (17).

Subsec. (a)(18). Pub.L. 104-193, § 374(a)(1) to (3), added par. (18).

1994 Amendments. Subsec. (a)(1)(A). Pub.L. 103-394, § 304(h)(3), substituted “507(a)(8)” for “507(a)(7)”.

Subsec. (a)(2)(C). Pub.L. 103-394, § 306, substituted “\$1,000 for ‘luxury goods or services’” for “\$500 for ‘luxury goods or services’”, “incurred by an individual debtor on or within 60 days” for “incurred by an individual debtor on or within forty days”, and “obtained by an individual debtor on or within 60 days” for “obtained by an individual debtor on or within twenty days”.

Pub.L. 103-394, § 501(d)(13)(A)(ii), struck out “(15 U.S.C. 1601 et seq.)” after “Consumer Credit Protection Act”.

Subsec. (a)(13). Pub.L. 103-322, § 320934, added par. (13).

Subsec. (a)(14). Pub.L. 103-394, § 221, added par. (14).

Subsec. (a)(15). Pub.L. 103-394, § 304(e), added par. (15). See codification note for this section.

Subsec. (a)(16). Pub.L. 103-394, § 309, added par. (16).

Subsec. (a). Pub.L. 103-394, § 501(d)(13)(A)(i), struck out second comma following “1141”.

Subsec. (b). Pub.L. 103-394, § 501(d)(13)(B), struck out “(20 U.S.C. 1087-3)” following “the Higher Education Act of 1965”, and “(42 U.S.C. 294f)” following “the Public Health Service Act”.

Subsec. (c)(1). Pub.L. 103-394, § 304(e)(2), substituted “(6), or (15)” for “or (6)” wherever appearing.

Subsec. (e). Pub.L. 103-394, § 501(d)(13)(C), substituted “insured depository institution” for “depository institution or insured credit union”.

1990 Amendments. Subsec. (a)(8). Pub.L. 101-647, § 3621(1), in introductory provisions substituted “for an educational benefit overpayment or loan made” for “for an educational loan made” and inserted preceding “unless” the phrase “or for an obligation to repay funds received as an educational benefit, scholarship or stipend.”.

Subsec. (a)(8)(A). Pub.L. 101-647, § 3621(2), substituted “such loan, benefit, scholarship, or stipend overpayment first became due more than 7 years” for “such loan first became due before five years”.

Subsec. (a)(9). Pub.L. 101-581 and Pub.L. 101-647, § 3102(a), made identical amendments, substituting “for death or personal injury caused by the debtor’s operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance; 01” for “to any entity, to the extent that such debt arises from a judgment or consent decree entered in a court of record against the debtor wherein liability was incurred by such debtor as a result of the debtor’s operation of a motor vehicle while legally intoxicated under the laws or regulations of any jurisdiction within the United States or its territories wherein such motor vehicle was operated and within which such liability was incurred; 01”.

Subsec. (a)(11), (12). Pub.L. 101-647, § 2522(a)(1), added pars. (11) and (12).

Subsec. (c)(1). Pub.L. 101-647, § 2522(a)(3)(A), designated existing provision as par. (1).

Subsec. (c)(2). Pub.L. 101-647, § 2522(a)(3)(B), added par. (2).

Subsec. (e). Pub.L. 101-647, § 2522(a)(2), added subsec. (e).

1986 Amendments. Subsec. (a). Pub.L. 99-554, § 257(n), added reference to section 1228(a) and (b) of this title.

Subsec. (a)(1)(A). Pub.L. 99-554, § 283(j)(1)(A), substituted “(7)” for “(6)”.

Subsec. (a)(5). Pub.L. 99-554, § 281, inserted “, determination made in accordance with State or territorial law by a governmental unit,” following “record”, and substituted “decree” for “decree”.

Subsec. (a)(10). Pub.L. 99-554, § 283(j)(1)(B), redesignated par. (9), as added by Pub.L. 95-598, as par. (10). See Codifications note set out under this section.

Subsec. (b). Pub.L. 99-554, § 283(j)(2), substituted “Service” for “Services”.

1984 Amendments. Subsec. (a)(2). Pub.L. 98-353, § 454(a)(1)(A), in provisions preceding subpar. (A), struck out “obtaining” following “for”.

Pub.L. 98-353, § 454(a)(1)(B), in provisions preceding subpar. (A), substituted “refinancing of credit, to the extent obtained” for “refinance of credit”.

Subsec. (a)(2)(A). Pub.L. 98-353, § 307(a)(1), struck out “or” at the end of subpar. (A).

Subsec. (a)(2)(B). Pub.L. 98-353, § 307(a)(2), added “or” at the end of subpar. (B).

Subsec. (a)(2)(B)(iii). Pub.L. 98-353, § 454(a)(1)(A), struck out “obtaining” preceding “such”.

Subsec. (a)(2)(C). Pub.L. 98-353, § 307(a)(3), added subpar. (C).

Subsec. (a)(5). Pub.L. 98-353, § 454(b)(1), added “or other order of a court of record” following “divorce decree,” in provisions preceding subpar. (A).

Subsec. (a)(5)(A). Pub.L. 98-353, § 454(b)(2), added “, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State” following “Social Security Act”.

Subsec. (a)(8). Pub.L. 98-353, § 454(a)(2), struck out “of higher education” following “a nonprofit institution of”.

Pub.L. 98-353, § 371(1), struck out “or” at the end of par. (8).

Subsec. (a)(9). Pub.L. 98-353, § 371(2), added par. (9), relating to debts incurred by persons driving while intoxicated.

Subsec. (c). Pub.L. 98-353, § 454(c), added “of a kind” following “debt”.

Subsec. (d). Pub.L. 98-353, § 307(b), substituted “the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney’s fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust” for “the court shall grant judgment against such creditor and in favor of the debtor for the costs of, and a reasonable attorney’s fee for, the proceeding to determine dischargeability, unless such granting of judgment would be clearly inequitable.”.

1981 Amendments. Subsec. (a)(5)(A). Pub.L. 97-35 substituted “law, or otherwise (other than debts assigned pursuant to section 402(a)(26) of the Social Security Act);” for “law, or otherwise;”.

1979 Amendments. Subsec. (a)(8). Pub.L. 96-56, § 3(1), in the introductory provisions, substituted “for an educational loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or a nonprofit institution of higher education” for “to a governmental unit, or a nonprofit institution of higher education, for an educational loan”.

Subsec. (a)(8)(A). Pub.L. 96-56, § 3(2), inserted "(exclusive of any applicable suspension of the repayment period)" following "before five years".

Effective Dates

1998 Acts. Amendment by Pub.L. 105-244 effective Oct. 1, 1998, except as otherwise provided, see section 3 of Pub.L. 105-244, set out as a note under section 1001 of Title 20.

Pub.L. 105-244, Title IX, § 971(b), Oct. 7, 1998, 112 Stat. 1837, provided that: "The amendment made by subsection (a) [amending subsec. (a)(8) of this section] shall apply only with respect to cases commenced under title 11, United States Code, after the date of enactment of this Act [Oct. 7, 1998]."

1996 Acts. For effective date of Title III of Pub.L. 104-193, see section 395(a) to (c) of Pub.L. 104-193, set out as a note under section 654 of Title 42, The Public Health and Welfare.

Section 374(c) of Pub.L. 104-193 provided that: "The amendments made by this section [amending this section and section 656 of Title 42, The Public Health and Welfare] shall apply only with respect to cases commenced under title 11 of the United States Code [this title] after the date of the enactment of this Act [Aug. 22, 1996]."

1994 Acts. Amendments by Pub.L. 103-394 effective on Oct. 22, 1994, and not to apply with respect to cases commenced under Title 11 of the United States Code before Oct. 22, 1994, see section 702 of Pub.L. 103-394.

1990 Acts. Section 3104 of Title XXXI of Pub.L. 101-647 provided that:

"(a) Effective date.—This title and the amendments made by this title [amending this section and section 1328 of this title and enacting provisions set out as a note under section 101 of this title] shall take effect on the date of the enactment of this Act [Nov. 29, 1990].

"(b) Application of amendments.—The amendments made by this title [amending this section and section 1328 of this title] shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act."

Amendment by section 3621 of Pub.L. 101-647 effective 180 days after Nov. 29, 1990, see section 3631 of Pub.L. 101-647, set out as a note under section 3001 of Title 28, Judiciary and Judicial Procedure.

Section 4 of Pub.L. 101-581 provided that:

"(a) Effective date.—This Act and the amendments made by this Act [amending this section and section 1328 of this title and enacting provisions set out as a note under section 101 of this title] shall take effect on the date of the enactment of this Act [Nov. 15, 1990]."

"(b) Application of amendments.—The amendments made by this Act [amending this section and section 1328 of this title] shall not apply with respect to cases commenced under title 11 of the United States Code [this title] before the date of the enactment of this Act [Nov. 5, 1990]."

1986 Acts. Amendment by sections 281 and 283 of Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by section 257 of Pub.L. 99-554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

1984 Acts. Amendment by Pub.L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a), formerly 553 of Pub.L. 98-353.

1981 Acts. Amendment by Pub.L. 97-35 effective on Aug. 13, 1981, see section 2334(c) of Pub.L. 97-35, set out as a note under section 656 of Title 42, The Public Health and Welfare.

Separability of Provisions. If any provision of section 101[a] [Title VIII] of Pub.L. 104-134, an amendment made by such Title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of such Title, the amendments made by such Title, and the application of the provisions of such Title to any person or circumstance not affected thereby, see section 101[a] [Title VIII, § 810] of Pub.L. 104-134, set out as a note under section 3626 of Title 18, Crimes and Criminal Procedure.

If any provision of or amendment made by Pub.L. 103-394 or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remaining provisions of and amendments made by Pub.L. 103-394 and the application of such provisions and amendments to any person or

circumstance shall not be affected thereby, see section 701 of Pub.L. 103-394.

Cross References

Disallowance of claim to extent claim is for unmatured debt and excepted from discharge as debt for alimony, maintenance or support, see section 502.

Discharge, see section 727.

Effect of confirmation, see section 1141.

Extent of priorities for unsecured claims of governmental units, see section 507.

Library References:

C.J.S. Bankruptcy §§ 18, 315 et seq.

West's Key No. Digests, Bankruptcy ☞3341-3388.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 524. Effect of discharge

(a) A discharge in a case under this title—

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1228(a)(1), or 1328(a)(1) of this title, or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

(b) Subsection (a)(3) of this section does not apply if—

(1)(A) the debtor's spouse is a debtor in a case under this title, or a bankrupt or a debtor in a case under the Bankruptcy Act, commenced within six years of the date of the filing of the petition in the case concerning the debtor; and

(B) the court does not grant the debtor's spouse a discharge in such case concerning the debtor's spouse; or

(2)(A) the court would not grant the debtor's spouse a discharge in a case under chapter 7 of this title concerning such spouse commenced on the date of the filing of the petition in the case concerning the debtor; and

(B) a determination that the court would not so grant such discharge is made by the bankruptcy court within the time and in the manner provided for a determination under section 727 of this title of whether a debtor is granted a discharge.

(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if—

(1) such agreement was made before the granting of the discharge under section 727, 1141, 1228, or 1328 of this title;

(2)(A) such agreement contains a clear and conspicuous statement which advises the debtor that the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim; and

(B) such agreement contains a clear and conspicuous statement which advises the debtor that such agreement is not required under this title, under nonbankruptcy law, or under any agreement not in accordance with the provisions of this subsection;

(3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that—

(A) such agreement represents a fully informed and voluntary agreement by the debtor;

(B) such agreement does not impose an undue hardship on the debtor or a dependent of the debtor; and

(C) the attorney fully advised the debtor of the legal effect and consequences of—

(i) an agreement of the kind specified in this subsection; and

(ii) any default under such an agreement;

(4) the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;

(5) the provisions of subsection (d) of this section have been complied with; and

(6)(A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, the court approves such agreement as—

(i) not imposing an undue hardship on the debtor or a dependent of the debtor; and

(ii) in the best interest of the debtor.

(B) Subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property.

(d) In a case concerning an individual, when the court has determined whether to grant or not to grant a discharge under section 727, 1141, 1228, or 1328 of this title, the court may hold a hearing at which the debtor shall appear in person. At any such hearing, the court may inform the debtor that a discharge has been granted or the reason why a discharge has not been granted. If a discharge has been granted and if the debtor desires to make an agreement of the kind specified in subsection (c) of this section and was not represented by an attorney during the course of negotiating such agreement, then the court shall hold a hearing at which the debtor shall appear in person and at such hearing the court shall

(1) inform the debtor—

(A) that such an agreement is not required under this title, under nonbankruptcy law, or under any agreement not made in accordance with the provisions of subsection (c) of this section; and

(B) of the legal effect and consequences of—

(i) an agreement of the kind specified in subsection (c) of this section; and

(ii) a default under such an agreement: and

(2) determine whether the agreement that the debtor desires to make complies with the requirements of subsection (c)(6) of this section, if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor.

(e) Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

(f) Nothing contained in subsection (c) or (d) of this section prevents a debtor from voluntarily repaying any debt.

(g)(1)(A) After notice and hearing, a court that enters an order confirming a plan of reorganization under chapter 11 may issue, in connection with such order, an injunction in accordance with this subsection to supplement the injunctive effect of a discharge under this section.

(B) An injunction may be issued under subparagraph (A) to enjoin entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claim or demand that, under a plan of reorganization, is to be paid in whole or in part by a trust described in paragraph (2)(B)(i), except such legal actions as are expressly allowed by the injunction, the confirmation order, or the plan of reorganization.

(2)(A) Subject to subsection (h), if the requirements of subparagraph (B) are met at the time an injunction described in paragraph (1) is entered, then after entry of such injunction, any proceeding that involves the validity, application, construction, or modification of such injunction, or of this subsection with respect to such injunction, may be commenced only in the district court in which such injunction was entered, and such court shall have exclusive jurisdiction over any such proceeding without regard to the amount in controversy.

(B) The requirements of this subparagraph are that—

(i) the injunction is to be implemented in connection with a trust that, pursuant to the plan of reorganization—

(I) is to assume the liabilities of a debtor which at the time of entry of the order for relief has been named as a defendant in personal injury, wrongful death, or property-damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products;

(II) is to be funded in whole or in part by the securities of 1 or more debtors involved in such plan and by the obligation of such debtor or debtors to make future payments, including dividends;

(III) is to own, or by the exercise of rights granted under such plan would be entitled to own if specified contingencies occur, a majority of the voting shares of—

(aa) each such debtor;

(bb) the parent corporation of each such debtor; or

(cc) a subsidiary of each such debtor that is also a debtor;
and

(IV) is to use its assets or income to pay claims and demands;
and

(ii) subject to subsection (h), the court determines that—

(I) the debtor is likely to be subject to substantial future demands for payment arising out of the same or similar conduct or events that gave rise to the claims that are addressed by the injunction;

(II) the actual amounts, numbers, and timing of such future demands cannot be determined;

(III) pursuit of such demands outside the procedures prescribed by such plan is likely to threaten the plan's purpose to deal equitably with claims and future demands;

(IV) as part of the process of seeking confirmation of such plan—

(aa) the terms of the injunction proposed to be issued under paragraph (1)(A), including any provisions barring actions against third parties pursuant to paragraph (4)(A), are set out in such plan and in any disclosure statement supporting the plan;
and

(bb) a separate class or classes of the claimants whose claims are to be addressed by a trust described in clause (i) is established and votes, by at least 75 percent of those voting, in favor of the plan; and

(V) subject to subsection (h), pursuant to court orders or otherwise, the trust will operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of present claims and future demands, or other comparable mechanisms, that provide reasonable assurance that the trust will value, and be in a

financial position to pay, present claims and future demands that involve similar claims in substantially the same manner.

(3)(A) If the requirements of paragraph (2)(B) are met and the order confirming the plan of reorganization was issued or affirmed by the district court that has jurisdiction over the reorganization case, then after the time for appeal of the order that issues or affirms the plan—

(i) the injunction shall be valid and enforceable and may not be revoked or modified by any court except through appeal in accordance with paragraph (6);

(ii) no entity that pursuant to such plan or thereafter becomes a direct or indirect transferee of, or successor to any assets of, a debtor or trust that is the subject of the injunction shall be liable with respect to any claim or demand made against such entity by reason of its becoming such a transferee or successor; and

(iii) no entity that pursuant to such plan or thereafter makes a loan to such a debtor or trust or to such a successor or transferee shall, by reason of making the loan, be liable with respect to any claim or demand made against such entity, nor shall any pledge of assets made in connection with such a loan be upset or impaired for that reason;

(B) Subparagraph (A) shall not be construed to—

(i) imply that an entity described in subparagraph (A)(ii) or (iii) would, if this paragraph were not applicable, necessarily be liable to any entity by reason of any of the acts described in subparagraph (A);

(ii) relieve any such entity of the duty to comply with, or of liability under, any Federal or State law regarding the making of a fraudulent conveyance in a transaction described in subparagraph (A)(ii) or (iii); or

(iii) relieve a debtor of the debtor's obligation to comply with the terms of the plan of reorganization, or affect the power of the court to exercise its authority under sections 1141 and 1142 to compel the debtor to do so.

(4)(A)(i) Subject to subparagraph (B), an injunction described in paragraph (1) shall be valid and enforceable against all entities that it addresses.

(ii) Notwithstanding the provisions of section 524(e), such an injunction may bar any action directed against a third party who is identifiable from the terms of such injunction (by name or as part of an identifiable group) and is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of—

(I) the third party's ownership of a financial interest in the debtor, a past or present affiliate of the debtor, or a predecessor in interest of the debtor;

(II) the third party's involvement in the management of the debtor or a predecessor in interest of the debtor, or service as an officer, director or employee of the debtor or a related party;

(III) the third party's provision of insurance to the debtor or a related party; or

(IV) the third party's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of the debtor or a related party, including but not limited to—

(aa) involvement in providing financing (debt or equity), or advice to an entity involved in such a transaction; or

(bb) acquiring or selling a financial interest in an entity as part of such a transaction.

(iii) As used in this subparagraph, the term “related party” means—

(I) a past or present affiliate of the debtor;

(II) a predecessor in interest of the debtor; or

(III) any entity that owned a financial interest in—

(aa) the debtor;

(bb) a past or present affiliate of the debtor; or

(cc) a predecessor in interest of the debtor.

(B) Subject to subsection (h), if, under a plan of reorganization, a kind of demand described in such plan is to be paid in whole or in part by a trust described in paragraph (2)(B)(i) in connection with which an injunction described in paragraph (1) is to be implemented, then such injunction shall be valid and enforceable with respect to a demand of such kind made, after such plan is confirmed, against the debtor or debtors involved, or against a third party described in subparagraph (A)(ii), if—

(i) as part of the proceedings leading to issuance of such injunction, the court appoints a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands of such kind, and

(ii) the court determines, before entering the order confirming such plan, that identifying such debtor or debtors, or such third party (by name or as part of an identifiable group), in such injunction with respect to such demands for purposes of this subparagraph is fair and equitable with respect to the persons that might subsequently assert such demands, in light of the benefits provided, or to be provided, to such trust on behalf of such debtor or debtors or such third party.

(5) In this subsection, the term “demand” means a demand for payment, present or future, that—

(A) was not a claim during the proceedings leading to the confirmation of a plan of reorganization;

(B) arises out of the same or similar conduct or events that gave rise to the claims addressed by the injunction issued under paragraph (1); and

(C) pursuant to the plan, is to be paid by a trust described in paragraph (2)(B)(i).

(6) Paragraph (3)(A)(i) does not bar an action taken by or at the direction of an appellate court on appeal of an injunction issued under paragraph (1) or of the order of confirmation that relates to the injunction.

(7) This subsection does not affect the operation of section 1144 or the power of the district court to refer a proceeding under section 157 of title 28 or any reference of a proceeding made prior to the date of the enactment of this subsection.

(h) Application to existing injunctions. For purposes of subsection (g)—

(1) subject to paragraph (2), if an injunction of the kind described in subsection (g)(1)(B) was issued before the date of the enactment of this Act, as part of a plan of reorganization confirmed by an order entered before such date, then the injunction shall be considered to meet the requirements of subsection (g)(2)(B) for purposes of subsection (g)(2)(A), and to satisfy subsection (g)(4)(A)(ii), if—

(A) the court determined at the time the plan was confirmed that the plan was fair and equitable in accordance with the requirements of section 1129(b);

(B) as part of the proceedings leading to issuance of such injunction and confirmation of such plan, the court had appointed a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands described in subsection (g)(4)(B) with respect to such plan; and

(C) such legal representative did not object to confirmation of such plan or issuance of such injunction; and

(2) for purposes of paragraph (1), if a trust described in subsection (g)(2)(B)(i) is subject to a court order on the date of the enactment of this Act staying such trust from settling or paying further claims—

(A) the requirements of subsection (g)(2)(B)(ii)(V) shall not apply with respect to such trust until such stay is lifted or dissolved; and

(B) if such trust meets such requirements on the date such stay is lifted or dissolved, such trust shall be considered to have met such requirements continuously from the date of the enactment of this Act.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2592; Pub.L. 98-353, Title III, §§ 308, 455, July 10, 1984, 98 Stat. 354, 376; Pub.L. 99-554, Title II, §§ 257(o), 282, 283(k), Oct. 27, 1986, 100 Stat. 3115-3117; Pub.L. 103-394, Title I, § 103(a), 111, Title V, § 501(d)(14), October 22, 1994, 108 Stat. 4108, 4113, 4145.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) specifies that a discharge in a bankruptcy case voids any judgment to the extent that it is a determination of the personal liability of the debtor with respect to a prepetition debt, and operates as an injunction against the commencement or continuation of an action, the employment of process, or any act, including telephone calls, letters, and personal contacts, to collect, recover, or offset any discharged debt as a personal liability of the debtor, or from property of the debtor, whether or not

the debtor has waived discharge of the debt involved. The injunction is to give complete effect to the discharge and to eliminate any doubt concerning the effect of the discharge as a total prohibition on debt collection efforts. This paragraph has been expanded over a comparable provision in Bankruptcy Act § 14f [former section 32(f) of this title] to cover any act to collect, such as dunning by telephone or letter, or indirectly through friends, relatives, or employers, harassment, threats of repossession, and the like. The change is consonant with the new policy forbidding binding reaffir-

mation agreements under proposed 11 U.S.C. 524(b), and is intended to insure that once a debt is discharged, the debtor will not be pressured in any way to repay it. In effect, the discharge extinguishes the debt, and creditors may not attempt to avoid that. The language "whether or not discharge of such debt is waived" is intended to prevent waiver of discharge of a particular debt from defeating the purposes of this section. It is directed at waiver of discharge of a particular debt, not waiver of discharge in toto as permitted under section 727(a)(9).

Subsection (a) also codifies the split discharge for debtors in community property states. If community property was in the estate and community claims were discharged, the discharge is effective against community creditors of the non-debtor spouse as well as of the debtor spouse.

Subsection (b) gives further effect to the discharge. It prohibits reaffirmation agreements after the commencement of the case with respect to any dischargeable debt. The prohibition extends to agreements the consideration for which in whole or in part is based on a dischargeable debt, and it applies whether or not discharge of the debt involved in the agreement has been waived. Thus, the prohibition on reaffirmation agreements extends to debts that are based on discharged debts. Thus, "second generation" debts, which included all or a part of a discharged debt could not be included in any new agreement for new money. This subsection will not have any effect on reaffirmations of debts discharged under the Bankruptcy Act [former Title 11]. It will only apply to discharges granted if commenced under the new title 11 bankruptcy code.

Subsection (c) grants an exception to the anti-reaffirmation provision. It permits reaffirmation in connection with the settlement of a proceeding to determine the dischargeability of the debt being reaffirmed, or in connection with a redemption agreement permitted under section 722. In either case, the reaffirmation agreement must be entered into in good faith and must be approved by the court.

Subsection (d) provides the discharge of the debtor does not affect co-debtors or guarantors.

Legislative Statements. Section 524(a) of the House amendment represents a compromise between the House bill and the Senate amendment. Section 524(b) of the House amendment is new, and represents standards

clarifying the operation of section 524(a)(3) with respect to community property.

Sections 524(c) and (d) represent a compromise between the House bill and Senate amendment on the issue of reaffirmation of a debt discharged in bankruptcy. Every affirmation to be enforceable must be approved by the court, and any debtor may rescind a reaffirmation for 30 days from the time the reaffirmation becomes enforceable. If the debtor is an individual the court must advise the debtor of various effects of reaffirmation at a hearing. In addition, to any extent the debt is a consumer debt that is not secured by real property of the debtor reaffirmation is permitted only if the court approves the reaffirmation agreement, before granting a discharge under section 727, 1141, or 1328, as not imposing a hardship on the debtor or a dependent of the debtor and in the best interest of the debtor; alternatively, the court may approve an agreement entered into in good faith that is in settlement of litigation of a complaint to determine dischargeability or that is entered into in connection with redemption under section 722. The hearing on discharge under section 524(d) will be held whether or not the debtor desires to reaffirm any debts.

Section 111(b) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided:

(b) Rule of Construction.—Nothing in subsection (a) [adding 524(g) and (h)], or in the amendments made by subsection (a), shall be construed to modify, impair, or supersede any other authority the court has to issue injunctions in connection with an order confirming a plan of reorganization.

1994 Act. The amendment clarifies that a separate hearing is not mandatory in order to reaffirm a debt where the debtor is adequately represented by counsel. In addition, the amendment supplements existing safeguards by requiring that the reaffirmation agreement advise the debtor that reaffirmation is not required, and by mandating that the attorney's affidavit indicate that the debtor has been fully advised of the ramifications of the reaffirmation agreement and any default thereunder. It is intended that, before the debtor agrees to a reaffirmation, the debtor be made fully aware of his or her rights under the Bankruptcy Code to discharge the debt and of the effect of a reaffirmation to continue the debt obligation as though a bankruptcy petition had not been filed.

Subsection (g) is also added, establishing a procedure for dealing in a chapter 11 reorganization proceeding with future personal injury claims against the debtor based on exposure to asbestos-containing products. The procedure involves the establishment of a trust to pay the future claims, coupled with an injunction to prevent future claimants from suing the debtor.

Effective Date of 1994 Amendments.

Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

Section 702(b)(1), (2)(A) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided:

“(b) Application of Amendments.—(1) Except as provided in paragraph (2), the amendments made by this Act shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act [October 22, 1994].

“(2)(A) Paragraph (1) shall not apply with respect to the amendment made by section 111 [to § 524(g), (h)].”

Effective Date of 1986 Amendment; Savings Provisions; Quarterly Fees.

Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(o), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of subsec. (a)(1), (2) of this section in chapter 9 cases, see section 901.
Extension of time generally, see section 108.

Library References:

C.J.S. Bankruptcy §§ 2, 97, 98, 102, 349, 350.
West's Key No. Digests, Bankruptcy ⇨2363.1-2366, 3411-3418.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 525. Protection against discriminatory treatment

(a) Except as provided in the Perishable Agricultural Commodities Act, 1930, the Packers and Stockyards Act, 1921, and section 1 of the Act entitled “An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes,” approved July 12, 1943, a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is

dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

(b) No private employer may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been a debtor under this title, a debtor or bankrupt under the Bankruptcy Act, or an individual associated with such debtor or bankrupt, solely because such debtor or bankrupt—

(1) is or has been a debtor under this title or a debtor or bankrupt under the Bankruptcy Act;

(2) has been insolvent before the commencement of a case under this title or during the case but before the grant or denial of a discharge; or

(3) has not paid a debt that is dischargeable in a case under this title or that was discharged under the Bankruptcy Act.

(c)(1) A governmental unit that operates a student grant or loan program and a person engaged in a business that includes the making of loans guaranteed or insured under a student loan program may not deny a grant, loan, loan guarantee, or loan insurance to a person that is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, or another person with whom the debtor or bankrupt has been associated, because the debtor or bankrupt is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of a case under this title or during the pendency of the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

(2) In this section, “student loan program” means the program operated under part B, D, or E of title IV of the Higher Education Act of 1965 or a similar program operated under State or local law.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2593; Pub.L. 98-353, Title III, § 309, July 10, 1984, 98 Stat. 354; Pub.L. 103-394, Title III, § 313, Title V, § 501(d), October 22, 1994, 108 Stat. 4140, 4145.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section is additional debtor protection. It codifies the result of *Perez v. Campbell*, 402 U.S. 637 (1971) [91 S.Ct. 1704, 29 L.Ed.2d 233], which held that a State would frustrate the Congressional policy of a fresh start for a debtor if it were permitted to refuse to renew a drivers license because a tort judgment resulting from an automobile accident had been unpaid as a result of a discharge in bankruptcy.

Notwithstanding any other laws, section 525 prohibits a governmental unit from denying, revoking, suspending, or refusing to renew a license, permit, charter, franchise, or other similar grant to, from conditioning such a grant to, from discrimination with respect to such a grant against, deny employment to,

terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor or that is or has been associated with a debtor. The prohibition extends only to discrimination or other action based solely on the basis of the bankruptcy, on the basis of insolvency before or during bankruptcy prior to a determination of discharge, or on the basis of nonpayment of a debt discharged in the bankruptcy case (the *Perez* situation). It does not prohibit consideration of other factors, such as future financial responsibility or ability, and does not prohibit imposition of requirements such as net capital rules, if applied nondiscriminatorily.

In addition, the section is not exhaustive. The enumeration of various forms of discrimination against former bankrupts is not intend-

ed to permit other forms of discrimination. The courts have been developing the Perez rule. This section permits further development to prohibit actions by governmental or quasi-governmental organizations that perform licensing functions, such as a State bar association or a medical society, or by other organizations that can seriously affect the debtors' livelihood or fresh start, such as exclusion from a union on the basis of discharge of a debt to the union's credit union.

The effect of the section, and of further interpretations of the Perez rule, is to strengthen the anti-reaffirmation policy found in section 524(b). Discrimination based solely on nonpayment could encourage reaffirmations, contrary to the expressed policy.

The section is not so broad as a comparable section proposed by the Bankruptcy Commission, S. 236, 94th Cong., 1st Sess. § 4-508 (1975), which would have extended the prohibition to any discrimination, even by private parties. Nevertheless, it is not limiting either, as noted. The courts will continue to mark the contours of the anti-discrimination provision in pursuit of sound bankruptcy policy.

References in Text. The Perishable Agricultural Commodities Act, 1930, referred to in text, is Act June 10, 1930, c. 436, 46 Stat. 531, which is classified principally to chapter 20A [section 499a et seq.] of Title 7, Agriculture.

The Packers and Stockyards Act, 1921, referred to in text, is Act Aug. 15, 1921, c. 64, 42

Stat. 159, which is classified principally to chapter 9 [section 181 et seq.] of Title 7.

Section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes", approved July 12, 1943, referred to in text, is classified to section 204 of Title 7.

1994 Act. The amendment adds subsection (c), clarifying the antidiscrimination provisions of the Bankruptcy Code to ensure that applicants for student loans or grants are not denied those benefits due to a prior bankruptcy. The section overrules *In re Goldrich*, 771 F.2d 28 (2d Cir.1985), which gave an unduly narrow interpretation to Code section 525.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy §§ 2, 97, 98.
West's Key No. Digests, Bankruptcy ⇨2363.1-2366.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

SUBCHAPTER III—THE ESTATE

§ 541. Property of the estate

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

debtor wants property to be postpetition trustee"
"prepetition

exemption property that is not exempt = property of the estate

are part of POE

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan.

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.

(b) Property of the estate does not include—

(1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor;

(2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case;

(3) any eligibility of the debtor to participate in programs authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; 42 U.S.C. 2751 et seq.), or any accreditation status or State licensure of the debtor as an educational institution;

(4) any interest of the debtor in liquid or gaseous hydrocarbons to the extent that—

(A)(i) the debtor has transferred or has agreed to transfer such interest pursuant to a farmout agreement or any written agreement directly related to a farmout agreement; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 544(a)(3) of this title; or

(B)(i) the debtor has transferred such interest pursuant to a written conveyance of a production payment to an entity that does not participate in the operation of the property from which such production payment is transferred; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 542 of this title; or

(5) any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made—

(A) on or after the date that is 14 days prior to the date on which the petition is filed; and

(B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with property of the debtor),

unless the money order issuer had not taken action, prior to the filing of the petition, to require compliance with the prohibition.

Paragraph (4) shall not be construed to exclude from the estate any consideration the debtor retains, receives, or is entitled to receive for transferring an interest in liquid or gaseous hydrocarbons pursuant to a farmout agreement.

(c)(1) Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision in an agreement, transfer instrument, or applicable nonbankruptcy law—

(A) that restricts or conditions transfer of such interest by the debtor; or

(B) that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property.

(2) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

(d) Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2594; Pub.L. 98-353, Title III, §§ 363(a), 456, July 10, 1984, 98 Stat. 363, 376; Pub.L. 101-508, Title III, § 3007(a)(2), Nov. 5, 1990, 104 Stat. 1388-28; Pub.L. 102-486, Title XXX, § 3017(b), Oct. 24, 1992, 106 Stat. 3130; Pub.L. 103-394, Title II, §§ 208(b), 223, October 22, 1994, 108 Stat. 4124, 4129.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section defines property of the estate, and specifies what property becomes property of the estate. The commencement of a bankruptcy case creates an estate. Under paragraph (1) of subsection (a), the estate is comprised of all legal or equitable interest of the debtor in property, wherever located, as of the commencement of the case. The scope of this paragraph is broad. It includes all kinds of property, including tangible or intangible property, causes of action (see Bankruptcy Act § 70a(6) [former section 110(a)(6) of this title]), and all other forms of property currently specified in section 70a of the Bankruptcy Act § 70a [former section 110(a) of this title], as well as property recovered by the trustee under section 542 of proposed title 11, if the property recovered was merely out of the possession of the debtor, yet remained "property of the debtor." The debtor's interest in property also includes "title" to property, which is an interest, just as are a possessory interest, or leasehold interest, for example. The result of *Segal v. Rochelle*, 382 U.S. 375 (1966) [86 S.Ct. 511, 15 L.Ed.2d 428], is followed, and the right to a refund is property of the estate.

Though this paragraph will include choses in action and claims by the debtor against others, it is not intended to expand the debtor's rights against others more than they exist at the commencement of the case. For example, if the debtor has a claim that is barred at the time of the commencement of the case by the statute of limitations, then the trustee would not be able to pursue that claim, because he too would be barred. He could take no greater rights than the debtor himself had. But see proposed 11 U.S.C. 108, which would permit the trustee a tolling of the statute of limitations if it had not run before the date of the filing of the petition.

Paragraph (1) has the effect of overruling *Lockwood v. Exchange Bank*, 190 U.S. 294 (1903) [23 S.Ct. 751, 47 L.Ed. 1061, 10 Am. Bankr.Rep. 107], because it includes as property of the estate all property of the debtor, even that needed for a fresh start. After the property comes into the estate, then the debtor is permitted to exempt it under proposed 11 U.S.C. 522, and the court will have jurisdiction to determine what property may be exempted and what remains as property of the estate. The broad jurisdictional grant in proposed 28 U.S.C. 1334 would have the effect of overruling

Lockwood independently of the change made by this provision.

Paragraph (1) also has the effect of overruling *Lines v. Frederick*, 400 U.S. 18 (1970) [91 S.Ct. 113, 27 L.Ed.2d 124].

Situations occasionally arise where property ostensibly belonging to the debtor will actually not be property of the debtor, but will be held in trust for another. For example, if the debtor has incurred medical bills that were covered by insurance, and the insurance company had sent the payment of the bills to the debtor before the debtor had paid the bill for which the payment was reimbursement, the payment would actually be held in constructive trust for the person to whom the bill was owed. This section and proposed 11 U.S.C. 545 also will not affect various statutory provisions that give a creditor of the debtor a lien that is valid outside as well as inside bankruptcy, or that creates a trust fund for the benefit of a creditor of the debtor. See *Packers and Stockyards Act* § 206, 7 U.S.C. 196 [section 196 of Title 7, Agriculture].

Bankruptcy Act § 8 [former section 26 of this title] has been deleted as unnecessary. Once the estate is created, no interests in property of the estate remain in the debtor. Consequently, if the debtor dies during the case, only property exempted from property of the estate or acquired by the debtor after the commencement of the case and not included as property of the estate will be available to the representative of the debtor's probate estate. The bankruptcy proceeding will continue in rem with respect to property of the state, and the discharge will apply in personam to relieve the debtor, and thus his probate representative, of liability for dischargeable debts.

The estate also includes the interests of the debtor and the debtor's spouse in community property, subject to certain limitations; property that the trustee recovers under the avoiding powers; property that the debtor acquires by bequest, devise, inheritance, a property settlement agreement with the debtor's spouse, or as the beneficiary of a life insurance policy within 180 days after the petition; and proceeds, product, offspring, rents, and profits of or from property of the estate, except such as are earning from services performed by an individual debtor after the commencement of

the case. Proceeds here is not used in a con-fine sense, as defined in the Uniform Com-mercial Code, but is intended to be a broad term to encompass all proceeds of property of the estate. The conversion in form of property of the estate does not change its character as property of the estate.

Subsection (b) excludes from property of the estate any power, such as a power of appoint-ment, that the debtor may exercise solely for the benefit of an entity other than the debtor. This changes present law which excludes pow-ers solely benefiting other persons but not oth-er entities.

Subsection (c) invalidates restrictions on the transfer of property of the debtor, in order that all of the interests of the debtor in property will become property of the estate. The provi-sions invalidated are those that restrict or con-dition transfer of the debtor's interest, and those that are conditioned on the insolvency or financial condition of the debtor, on the com-mencement of a bankruptcy case, or on the appointment of a custodian of the debtor's property. Paragraph (2) of subsection (c), however, preserves restrictions on a transfer of a spendthrift trust that the restriction is en-forceable nonbankruptcy law to the extent of the income reasonably necessary for the sup-port of a debtor and his dependents.

Subsection (d) [now (e)], derived from sec-tion 70c of the Bankruptcy Act [former section 110(c) of this title], gives the estate the benefit of all defenses available to the debtor as against an entity other than the estate, includ-ing such defenses as statutes of limitations, statutes of frauds, usury, and other personal defenses, and makes waiver by the debtor after the commencement of the case ineffective to bind the estate.

Section 541(e) [now (d)] confirms the cur-rent status under the Bankruptcy Act [former Title 11] of bona fide secondary mortgage mar-ket transactions as the purchase and sale of assets. Mortgages or interests in mortgages sold in the secondary market should not be considered as part of the debtor's estate. To permit the efficient servicing of mortgages or interests in mortgages the seller often retains the original mortgage notes and related docu-ments, and the purchaser records under State recording statutes the purchaser's ownership of the mortgages or interests in mortgages purchased. Section 541(e) makes clear that the seller's retention of the mortgage docu-ments and the purchaser's decision not to rec-ord do not impair the asset sale character of

secondary mortgage market transactions. The committee notes that in secondary mortgage market transactions the parties may character-ize their relationship as one of trust, agency, or independent contractor. The characterization adopted by the parties should not affect the statutes in bankruptcy on bona fide secondary mortgage market purchases and sales.

Legislative Statements. Section 541(a)(7) is new. The provision clarifies that any inter-est in property that the estate acquires after the commencement of the case is property of the estate; for example, if the estate enters into a contract, after the commencement of the case, such a contract would be property of the estate. The addition of this provision by the House amendment merely clarifies that section 541(a) is an all-embracing definition which in-cludes charges on property, such as liens held by the debtor on property of a third party, or beneficial rights and interests that the debtor may have in property of another. However, only the debtor's interest in such property becomes property of the estate. If the debtor holds bare legal title or holds property in trust for another, only those rights which the debtor would have otherwise had emanating from such interest pass to the estate under section 541. Neither this section nor section 545 will affect various statutory provisions that give a creditor a lien that is valid both inside and outside bankruptcy against a bona fide pur-chaser of property from the debtor, or that creates a trust fund for the benefit of creditors meeting similar criteria. See *Packers and Stockyards Act* § 206, 7 U.S.C. 196 (1976) [sec-tion 196 of Title 7, Agriculture].

Section 541(c)(2) follows the position taken in the House bill and rejects the position taken in the Senate amendment with respect to in-come limitations on a spend-thrift trust.

Section 541(d) of the House amendment is derived from section 541(e) of the Senate amendment and reiterates the general princi-ple that where the debtor holds bare legal title without any equitable interest, that the estate acquires bare legal title without any equitable interest in the property. The purpose of sec-tion 541(d) as applied to the secondary mort-gage market is identical to the purpose of section 541(e) of the Senate amendment and section 541(d) will accomplish the same result as would have been accomplished by section 541(e). Even if a mortgage seller retains for purposes of servicing legal title to mortgages or interests in mortgages sold in the secondary

mortgage market, the trustee would be required by section 541(d) to turn over the mortgages or interests in mortgages to the purchaser of those mortgages.

The seller of mortgages in the secondary mortgage market will often retain the original mortgage notes and related documents and the seller will not endorse the notes to reflect the sale to the purchaser. Similarly, the purchaser will often not record the purchaser's ownership of the mortgages or interests in mortgages under State recording statutes. These facts are irrelevant and the seller's retention of the mortgage documents and the purchaser's decision not to record do not change the trustee's obligation to turn the mortgages or interests in mortgages over to the purchaser. The application of section 541(d) to secondary mortgage market transactions will not be affected by the terms of the servicing agreement between the mortgage servicer and the purchaser of the mortgages. Under section 541(d), the trustee is required to recognize the purchaser's title to the mortgages or interests in mortgages and to turn this property over to the purchaser. It makes no difference whether the servicer and the purchaser characterize their relationship as one of trust, agency, or independent contractor.

The purpose of section 541(d) as applied to the secondary mortgage market is therefore to make certain that secondary mortgage market sales as they are currently structured are not subject to challenge by bankruptcy trustees and that purchasers of mortgages will be able to obtain the mortgages or interests in mortgages which they have purchased from trustees without the trustees asserting that a sale of mortgages is a loan from the purchaser to the seller.

Thus, as section 541(a)(1) clearly states, the estate is comprised of all legal or equitable interests of the debtor in property as of the commencement of the case. To the extent such an interest is limited in the hands of the debtor, it is equally limited in the hands of the estate except to the extent that defenses which are personal against the debtor are not effective against the estate.

The Senate amendment provided that property of the estate does not include amounts held by the debtor as trustee and any taxes withheld or collected from others before the commencement of the case. The House amendment removes these two provisions. As to property held by the debtor as a trustee, the House amendment provides that property of

the estate will include whatever interest the debtor held in the property at the commencement of the case. Thus, where the debtor held only legal title to the property and the beneficial interest in that property belongs to another, such as exists in the case of property held in trust, the property of the estate includes the legal title, but not the beneficial interest in the property.

As to withheld taxes, the House amendment deletes the rule in the Senate bill as unnecessary since property of the estate does not include the beneficial interest in property held by the debtor as a trustee. Under the Internal Revenue Code of 1954 (section 7501 [section 7501 of Title 26, Internal Revenue Code]), the amounts of withheld taxes are held to be a special fund in trust for the United States. Where the Internal Revenue Service can demonstrate that the amounts of taxes withheld are still in the possession of the debtor at the commencement of the case, then if a trust is created, those amounts are not property of the estate. Compare *In re Shakesteers Coffee Shops*, 546 F.2d 821 (9th Cir.1976) with *In re Glynn Wholesale Building Materials, Inc.* (S.D.Ga.1978) and *In re Progress Tech Colleges, Inc.*, 42 Aftr 2d 78-5573 (S.D.Ohio 1977).

Where it is not possible for the Internal Revenue Service to demonstrate that the amounts of taxes withheld are still in the possession of the debtor at the commencement of the case, present law generally includes amounts of withheld taxes as property of the estate. See, e.g., *United States v. Randall*, 401 U.S. 513 (1973) [91 S.Ct. 991, 28 L.Ed.2d 273] and *In re Tamasha Town and Country Club*, 483 F.2d 1377 (9th Cir.1973). Nonetheless, a serious problem exists where "trust fund taxes" withheld from others are held to be property of the estate where the withheld amounts are commingled with other assets of the debtor. The courts should permit the use of reasonable assumptions under which the Internal Revenue Service, and other tax authorities, can demonstrate that amounts of withheld taxes are still in the possession of the debtor at the commencement of the case. For example, where the debtor had commingled that amount of withheld taxes in his general checking account, it might be reasonable to assume that any remaining amounts in that account on the commencement of the case are the withheld taxes. In addition, Congress may consider future amendments to the Internal Revenue Code making clear that amounts of withheld taxes are held by the debtor in a trust relation-

ship and, consequently, that such amounts are not property of the estate.

1994 Act. The amendment to subsection (b)(4) excludes production payments sold by the debtor prior to a bankruptcy filing from the debtor's estate in bankruptcy. It is not the intent of this section to permit a conveyance of a production payment or an oil and gas lease to be recharacterized in a bankruptcy context as a contractual interest subject to rejection under section 365 of the Bankruptcy Code.

The amendment adds subsection (b)(5), which excludes from the debtor's estate proceeds from money orders sold within 14 days of the filing of the bankruptcy pursuant to an agreement prohibiting the commingling of such sale proceeds with property of the debtor. To benefit from this section, the money order issuer must have acted, prior to the petition, to require compliance with the commingling prohibition.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

1992 Amendment. Pub.L. 102-486, § 3017(b) added par. (b)(4).

Effective Date of 1992 Amendment. Pub.L. 102-486, § 3017(c), provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

"(2) The amendments made by this section shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act [Oct. 24, 1992]."

Effective and Termination Dates of 1990 Amendment. Amendment by Pub.L. 101-508, § 3007(a)(2), effective Nov. 5, 1990, see section 3007(a)(3) of Pub.L. 101-508, set out as a note under section 362 of this title.

Amendment by Pub.L. 101-508, § 3007(a)(2), see section 3008 of Pub.L. 101-508, set out as a note under section 362 of this title.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Community claim defined, see section 101.
Distribution of property of estate, see section 726.
Effect of discharge, see section 524.
Exemptions, see section 522.
Farmout agreement defined, see section 101.
Property of estate in chapter 13 cases, see section 1306.
Special tax provisions concerning estates of partners and partnerships, see section 728.

Library References:

C.J.S. Bankruptcy § 105 et seq.
West's Key No. Digests, Bankruptcy Ⓒ2491-2559.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 542. Turnover of property to the estate

(a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

(b) Except as provided in subsection (c) or (d) of this section, an entity that owes a debt that is property of the estate and that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the trustee, except to the extent that such debt may be offset under section 553 of this title against a claim against the debtor.

(c) Except as provided in section 362(a)(7) of this title, an entity that has neither actual notice nor actual knowledge of the commencement of the case concerning the debtor may transfer property of the estate, or pay a debt owing to the debtor, in good faith and other than in the manner specified in subsection (d) of this section, to an entity other than the trustee, with the same effect as to the entity making such transfer or payment as if the case under this title concerning the debtor had not been commenced.

(d) A life insurance company may transfer property of the estate or property of the debtor to such company in good faith, with the same effect with respect to such company as if the case under this title concerning the debtor had not been commenced, if such transfer is to pay a premium or to carry out a nonforfeiture insurance option, and is required to be made automatically, under a life insurance contract with such company that was entered into before the date of the filing of the petition and that is property of the estate.

(e) Subject to any applicable privilege, after notice and a hearing, the court may order an attorney, accountant, or other person that holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2595; Pub.L. 98-353, Title III, § 457, July 10, 1984, 98 Stat. 376; Pub.L. 103-394, Title V, § 501(d), October 22, 1994, 108 Stat. 4146.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) of this section requires anyone holding property of the estate on the date of the filing of the petition, or property that the trustee may use, sell, or lease under section 363, to deliver it to the trustee. The subsection also requires an accounting. The holder of property of the estate is excused from the turnover requirement of this subsection if the property held is of inconsequential value to the estate. However, this provision must be read in conjunction with the remainder of the subsection, so that if the property is of inconsequential monetary value, yet has a significant use value for the estate, the holder of the property would not be excused from turnover.

Subsection (b) requires an entity that owes money to the debtor as of the date of the petition, or that holds money payable on demand or payable on order, to pay the money to the order of the trustee. An exception is made

to the extent that the entity has a valid right of setoff, as recognized by section 553.

Subsection (c) provides an exception to subsections (a) and (b). It protects an entity that has neither actual notice nor actual knowledge of the case and that transfers, in good faith, property that is deliverable or payable to the trustee to someone other than to the estate or on order of the estate. This subsection codifies the result of *Bank of Marin v. England*, 385 U.S. 99 (1966) [87 S.Ct. 274, 17 L.Ed.2d 197], but does not go so far as to permit bank setoff in violation of the automatic stay, proposed 11 U.S.C. 362(a)(7), even if the bank offsetting the debtor's balance has no knowledge of the case.

Subsection (d) protects life insurance companies that are required by contract to make automatic premium loans from property that might otherwise be property of the estate.

Subsection (e) requires an attorney, accountant, or other professional that holds recorded

information relating to the debtor's property or financial affairs, to surrender it to the trustee. This duty is subject to any applicable claim of privilege, such as attorney-client privilege. It is a new provision that deprives accountants and attorneys of the leverage that they have today, under State law lien provisions, to receive payment in full ahead of other creditors when the information they hold is necessary to the administration of the estate.

Legislative Statements. Section 542(a) of the House amendment modifies similar provisions contained in the House bill and the Senate amendment treating with turnover of property to the estate. The section makes clear that any entity, other than a custodian, is required to deliver property of the estate to the trustee or debtor in possession whenever such property is acquired by the entity during the case, if the trustee or debtor in possession may use, sell, or lease the property under section 363, or if the debtor may exempt the property under section 522, unless the property is of inconsequential value or benefit to the estate. This section is not intended to require an entity to deliver property to the trustee if such entity has obtained an order of the court authorizing the entity to retain possession, custody or control of the property.

Cross References

Disallowance of claims of entity from which property is recoverable, see section 502.
Exemptions, see section 522.

Library References:

C.J.S. Bankruptcy §§ 184-187.
West's Key No. Digests, Bankruptcy ⇨3063-3066.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 543. Turnover of property by a custodian

(a) A custodian with knowledge of the commencement of a case under this title concerning the debtor may not make any disbursement from, or take any action in the administration of, property of the debtor, proceeds, product, offspring, rents, or profits of such property, or property of the estate, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property.

(b) A custodian shall—

(1) deliver to the trustee any property of the debtor held by or transferred to such custodian, or proceeds, product, offspring, rents, or profits of such property, that is in such custodian's possession, custody, or control on

The House amendment adopts section 542(c) of the House bill in preference to a similar provision contained in section 542(c) of the Senate amendment. Protection afforded by section 542(c) applies only to the transferor or payor and not to a transferee or payee receiving a transfer or payment, as the case may be. Such transferee or payee is treated under section 549 and section 550 of title 11.

The extent to which the attorney client privilege is valid against the trustee is unclear under current law and is left to be determined by the courts on a case by case basis.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1, of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

the date that such custodian acquires knowledge of the commencement of the case; and

(2) file an accounting of any property of the debtor, or proceeds, product, offspring, rents, or profits of such property, that, at any time, came into the possession, custody, or control of such custodian.

(c) The court, after notice and a hearing, shall—

(1) protect all entities to which a custodian has become obligated with respect to such property or proceeds, product, offspring, rents, or profits of such property;

(2) provide for the payment of reasonable compensation for services rendered and costs and expenses incurred by such custodian; and

(3) surcharge such custodian, other than an assignee for the benefit of the debtor's creditors that was appointed or took possession more than 120 days before the date of the filing of the petition, for any improper or excessive disbursement, other than a disbursement that has been made in accordance with applicable law or that has been approved, after notice and a hearing, by a court of competent jurisdiction before the commencement of the case under this title.

(d) After notice and hearing, the bankruptcy court—

(1) may excuse compliance with subsection (a), (b), or (c) of this section if the interests of creditors and, if the debtor is not insolvent, of equity security holders would be better served by permitting a custodian to continue in possession, custody, or control of such property, and

(2) shall excuse compliance with subsections (a) and (b)(1) of this section if the custodian is an assignee for the benefit of the debtor's creditors that was appointed or took possession more than 120 days before the date of the filing of the petition, unless compliance with such subsections is necessary to prevent fraud or injustice.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2595; Pub.L. 98-353, Title III, § 458, July 10, 1984, 98 Stat. 376; Pub.L. 103-394, Title V, § 501(d), October 22, 1994, 108 Stat. 4146.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section requires a custodian appointed before the bankruptcy case to deliver to the trustee and to account for property that has come into his possession, custody, or control as a custodian. "Property of the debtor" in section (a) includes property that was property of the debtor at the time the custodian took the property, but the title to which passed to the custodian. The section requires the court to protect any obligations incurred by the custodian, provide for the payment of reasonable compensation for services rendered and costs and expenses incurred by the custodian, and to surcharge the

custodian for any improper or excessive disbursement, unless it has been approved by a court of competent jurisdiction. Subsection (d) reinforces the general abstention policy in section 305 by permitting the bankruptcy court to authorize the custodianship to proceed notwithstanding this section.

Legislative Statements. Section 543(a) is a modification of similar provisions contained in the House bill and the Senate amendment. The provision clarifies that a custodian may always act as is necessary to preserve property of the debtor. Section 543(c)(3) excepts from surcharge a custodian that is an assignee for

the benefit of creditors, who was appointed or took possession before 120 days before the date of the filing of the petition, whichever is later. The provision also prevents a custodian from being surcharged in connection with payments made in accordance with applicable law.

Effective Date of 1994 Amendments.

Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b),

this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions.

For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

- Administrative expenses of superseded custodians, see section 503.
- Disallowance of claims of entity from which property is recoverable, see section 502.
- Effect of dismissal, see section 349.
- Order of payment on claims for expenses of superseded custodians, see section 726.
- Property recoverable by trustee as exempt, see section 522.

Library References:

- C.J.S. Bankruptcy §§ 184, 186.
- West's Key No. Digests, Bankruptcy ⇨3063.1-3066(6).

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 544. Trustee as lien creditor and as successor to certain creditors and purchasers

(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by—

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;

(2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; or

(3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

(b)(1) Except as provided in paragraph (2), the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title.

(2) Paragraph (1) shall not apply to a transfer of a charitable contribution (as that term is defined in section 548(d)(3)) that is not covered under section 548(a)(1)(B), by reason of section 548(a)(2). Any claim by any person to recover a transferred contribution described in the preceding sentence under Federal or State law in a Federal or State court shall be preempted by the commencement of the case.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2596; Pub.L. 98-353, Title III, § 459, July 10, 1984, 98 Stat. 377; Pub.L. 105-183, § 3, June 19, 1998, 112 Stat. 517.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) is the “strong arm clause” of current law, now found in Bankruptcy Act § 70c [former section 110(c) of this title]. It gives the trustee the rights of a creditor on a simple contract with a judicial lien on the property of the debtor as of the date of the petition; of a creditor with a writ of execution against the property of the debtor unsatisfied as of the date of the petition; and a bona fide purchaser of the real property of the debtor as of the date of the petition. “Simple contract” as used here is derived from Bankruptcy Act § 60a(4) [former section 96(a)(4) of this title]. The third status, that of a bona fide purchaser of real property, is new.

Subsection (b) is derived from current section 70e [former section 110(e) of this title]. It gives the trustee the rights of actual unsecured creditors under applicable law to void transfers. It follows *Moore v. Bay*, 284 U.S. 4 (1931) [52 S.Ct. 3, 76 L.Ed. 133, 18 Am.Bankr. Rep.N.S. 675], and overrules those cases that hold section 70e [former section 110(e) of this title] gives the trustee the rights of secured creditors.

Legislative Statements. Section 544(a)(3) modifies similar provisions contained in the House bill and Senate amendment so as not to require a creditor to perform the impossible in order to perfect his interest. Both the lien creditor test in section 544(a)(1), and the bona

fide purchaser test in section 544(a)(3) should not require a transferee to perfect a transfer against an entity with respect to which applicable law does not permit perfection. The avoiding powers under section 544(a)(1), (2), and (3) are new. In particular, section 544(a)(1) overrules *Pacific Finance Corp. v. Edwards*, 309 F.2d 224 (9th Cir. 1962), and *In re Federals, Inc.*, 553 F.2d 509 (6th Cir. 1977), insofar as those cases held that the trustee did not have the status of a creditor who extended credit immediately prior to the commencement of the case.

The House amendment deletes section 544(c) of the House bill.

Effective Date of 1998 Amendments. Pub.L. 105-183, § 5, 112 Stat. 518-19, provides, “This Act and the amendments made by this Act shall apply to any case brought under an applicable provision of title 11, United States Code, that is pending or commenced on or after the date of enactment of this Act [June 19, 1998].”

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Appointment of trustee upon debtor's refusal to pursue cause of action under this section, see section 926.

Commencement of involuntary cases by transferees of voidable transfers, see section 303.

Disallowance of claims of entity that is transferee of avoidable transfer, see section 502.

Effect of dismissal, see section 349.

Exemptions, see section 522.

Voidable transfers in

Commodity broker liquidation cases, see section 764.

Stockbroker liquidation cases, see section 749.

Library References:

C.J.S. Bankruptcy §§ 123, 124, 126, 134, 180.

West's Key No. Digests, Bankruptcy Ⓒ2512-2516, 2701-2705.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 545. Statutory liens

The trustee may avoid the fixing of a statutory lien on property of the debtor to the extent that such lien—

(1) first becomes effective against the debtor—

(A) when a case under this title concerning the debtor is commenced;

(B) when an insolvency proceeding other than under this title concerning the debtor is commenced;

(C) when a custodian is appointed or authorized to take or takes possession;

(D) when the debtor becomes insolvent;

(E) when the debtor's financial condition fails to meet a specified standard; or

(F) at the time of an execution against property of the debtor levied at the instance of an entity other than the holder of such statutory lien;

(2) is not perfected or enforceable at the time of the commencement of the case against a bona fide purchaser that purchases such property at the time of the commencement of the case, whether or not such a purchaser exists;

(3) is for rent; or

(4) is a lien of distress for rent.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2597; Pub.L. 98-353, Title III, § 460, July 10, 1984, 98 Stat. 377.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section permits the trustee to avoid the fixing of certain statutory liens. It is derived from subsection 67(b) [former section 107(b) of this title] and 67(c) [former section 107(c) of this title] of present law. Liens that first become effective on the bankruptcy or insolvency of the debtor are avoidable by the trustee. Liens that are not perfected or enforceable on the date of the petition against a bona fide purchaser are voidable. If a transferee is able to perfect under section 546(a) and that perfection relates back to an earlier date, then in spite of the filing of the bankruptcy petition, the trustee would not be able to defeat the lien, because the lien would be perfected and enforceable against a

bona fide purchaser that purchased the property on the date of the filing of the petition. Finally, a lien for rent or of distress for rent is voidable, whether the lien is a statutory lien or a common law lien of distress for rent. See proposed 11 U.S.C. 101(37); Bankruptcy Act § 67(c)(1)(C) [former section 107(c)(1)(C) of this title]. The trustee may avoid a lien under this section even if the lien has been enforced by sale before the commencement of the case. To that extent, Bankruptcy Act § 67(c)(5) [former section 107(c)(5) of this title] is not followed.

Subsection (b) limits the trustee's power to avoid tax liens under Federal, state, or local law. For example, under § 6323 of the Inter-

nal Revenue Code [section 6323 of Title 26, Internal Revenue Code]. Once public notice of a tax lien has been filed, the Government is generally entitled to priority over subsequent lienholders. However, certain purchasers who acquire an interest in certain specific kinds of personal property will take free of an existing filed tax lien attaching to such property. Among the specific kinds of personal property which a purchaser can acquire free of an existing tax lien (unless the buyer knows of the existence of the lien) are stocks and securities, motor vehicles, inventory, and certain household goods. Under the present Bankruptcy Act (§ 67(c)(1) [former section 107(c)(1) of this title]), the trustee may be viewed as a bona fide purchaser, so that he can take over any such designated items free of tax liens even if the tax authority has perfected its lien. However, the reasons for enabling a bona fide purchaser to take these kinds of assets free of an unfiled tax lien, that is, to encourage free movement at these assets in general commerce, do not apply to a trustee in a title 11 case, who is not in the same position as an ordinary bona fide purchaser as to such property. The bill accordingly adds a new subsection (b) to sec. 545 providing, in effect, that a trustee in bankruptcy does not have the right under this section to take otherwise specially treated items of personal property free of a tax lien filed before the filing of the petition.

Legislative Statements. Section 545 of the House amendment modifies similar provi-

sions contained in the House bill and Senate amendment to make clear that a statutory lien may be avoided under section 545 only to the extent the lien violates the perfection standards of section 545. Thus a Federal tax lien is invalid under section 545(2) with respect to property specified in sections 6323(b) and (c) of the Internal Revenue Code of 1954 [sections 6323(b) and (c) of Title 26, Internal Revenue Code]. As a result of this modification, section 545(b) of the Senate amendment is deleted as unnecessary.

The House amendment retains the provision of section 545(2) of the House bill giving the trustee in a bankruptcy case the same power which a bona fide purchaser has to take over certain kinds of personal property despite the existence of a tax lien covering that property. The amendment thus retains present law, and deletes section 545(b) of the Senate amendment which would have no longer allowed the trustee to step into the shoes of a bona fide purchaser for this purpose.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

- Applicability of this section in chapter 9 cases, see section 901.
- Appointment of trustee upon debtor's refusal to pursue cause of action under this section, see section 926.
- Commencement of involuntary cases by transferees of voidable transfers, see section 303.
- Disallowance of claims of entity that is a transferee of an avoidable transfer, see section 502.
- Effect of dismissal, see section 349.
- Exemptions, see section 522.
- Voidable transfers in
 - Commodity broker liquidation cases, see section 764.
 - Stockbroker liquidation cases, see section 749.

Library References:

- C.J.S. Bankruptcy § 130.
- West's Key No. Digests, Bankruptcy Ⓒ2580.1-2582.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 546. Limitations on avoiding powers

(a) An action or proceeding under section 544, 545, 547, 548, or 553 of this title may not be commenced after the earlier of—

(1) the later of—

(A) 2 years after the entry of the order for relief; or

(B) 1 year after the appointment or election of the first trustee under section 702, 1104, 1163, 1202, or 1302 of this title if such appointment or such election occurs before the expiration of the period specified in subparagraph (A); or

(2) the time the case is closed or dismissed.

(b)(1) The rights and powers of a trustee under sections 544, 545, and 549 of this title are subject to any generally applicable law that—

(A) permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection; or

(B) provides for the maintenance or continuation of perfection of an interest in property to be effective against an entity that acquires rights in such property before the date on which action is taken to effect such maintenance or continuation.

(2) If—

(A) a law described in paragraph (1) requires seizure of such property or commencement of an action to accomplish such perfection, or maintenance or continuation of perfection of an interest in property; and

(B) such property has not been seized or such an action has not been commenced before the date of the filing of the petition;

such interest in such property shall be perfected, or perfection of such interest shall be maintained or continued, by giving notice within the time fixed by such law for such seizure or such commencement.

(c) Except as provided in subsection (d) of this section, the rights and powers of a trustee under sections 544(a), 545, 547, and 549 of this title are subject to any statutory or common-law right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, but—

(1) such a seller may not reclaim any such goods unless such seller demands in writing reclamation of such goods—

(A) before 10 days after receipt of such goods by the debtor; or

(B) if such 10-day period expires after the commencement of the case, before 20 days after receipt of such goods by the debtor; and

(2) the court may deny reclamation to a seller with such a right of reclamation that has made such a demand only if the court—

(A) grants the claim of such a seller priority as a claim of a kind specified in section 503(b) of this title; or

(B) secures such claim by a lien.

(d) In the case of a seller who is a producer of grain sold to a grain storage facility, owned or operated by the debtor, in the ordinary course of such seller's business (as such terms are defined in section 557 of this title) or in the case of a United States fisherman who has caught fish sold to a fish processing facility owned or operated by the debtor in the ordinary course of such fisherman's

business, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 of this title are subject to any statutory or common law right of such producer or fisherman to reclaim such grain or fish if the debtor has received such grain or fish while insolvent, but—

(1) such producer or fisherman may not reclaim any grain or fish unless such producer or fisherman demands, in writing, reclamation of such grain or fish before ten days after receipt thereof by the debtor; and

(2) the court may deny reclamation to such a producer or fisherman with a right of reclamation that has made such a demand only if the court secures such claim by a lien.

(e) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, made by or to a commodity broker, forward contract merchant, stockbroker, financial institution, or securities clearing agency, that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

(f) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, made by or to a repo participant, in connection with a repurchase agreement and that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

(g) Notwithstanding sections 544, 545, 547, 548(a)(1)(B) and 548(b) of this title, the trustee may not avoid a transfer under a swap agreement, made by or to a swap participant, in connection with a swap agreement and that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

(g)¹ Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553, if the court determines on a motion by the trustee made not later than 120 days after the date of the order for relief in a case under chapter 11 of this title and after notice and a hearing, that a return is in the best interests of the estate, the debtor, with the consent of a creditor, may return goods shipped to the debtor by the creditor before the commencement of the case, and the creditor may offset the purchase price of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2597; Pub.L. 97-222, § 4, July 27, 1982, 96 Stat. 236; Pub.L. 98-353, Title III, §§ 351, 393, 461, July 10, 1984, 98 Stat. 359, 365, 377; Pub.L. 99-554, Title II, §§ 257(d), 283(l), Oct. 27, 1986, 100 Stat. 3114, 3117; Pub.L. 101-311, Title I, § 103, Title II, § 203, June 25, 1990, 104 Stat. 268, 269; Pub.L. 103-394, Title II, §§ 204(b), 209, 216, 222(a), Title V, § 501(b)(4), October 22, 1994, 108 Stat. 4122, 4125, 4126, 4129, 4142; Pub.L. 105-183, § 3, June 19, 1998, 112 Stat. 517.

1. See Codification note below.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. The trustee's rights and powers under certain of the avoiding powers are limited by section 546. First, if an interest holder against whom the trustee would have rights still has, under applicable nonbankruptcy law, and as of the date of the petition, the opportunity to perfect his lien against an intervening interest holder, then he may perfect his interest against the trustee. If applicable law requires seizure for perfection, then perfection is by notice to the trustee instead. The rights granted to a creditor under this subsection prevail over the trustee only if the transferee has perfected the transfer in accordance with applicable law, and that perfection relates back to a date that is before the commencement of the case.

The phrase "generally applicable law" relates to those provisions of applicable law that apply both in bankruptcy cases and outside of bankruptcy cases. For example, many State laws, under the Uniform Commercial Code, permit perfection of a purchase-money security interest to relate back to defeat an earlier levy by another creditor if the former was perfected within ten days of delivery of the property. U.C.C. § 9-301(2). Such perfection would then be able to defeat an intervening hypothetical judicial lien creditor on the date of the filing of the petition. The purpose of the subsection is to protect, in spite of the surprise intervention of a bankruptcy petition, those whom State law protects by allowing them to perfect their liens or interests as of an effective date that is earlier than the date of perfection. It is not designed to give the States an opportunity to enact disguised priorities in the form of liens that apply only in bankruptcy case.

Subsection (b) specifies that the trustee's rights and powers under the strong arm clause, the successor to creditors provision, the preference section, and the postpetition transaction section are all subject to any statutory or common-law right of a seller, in the ordinary course of business, of goods to the debtor to reclaim the goods if the debtor received the goods on credit while insolvent. The seller must demand reclamation within ten days after receipt of the goods by the debtor. As under nonbankruptcy law, the right is subject to any superior rights of secured creditors. The purpose of the provision is to recognize, in part, the validity of section 2-702 of the Uniform Commercial Code, which has generated much litigation, confusion, and divergent deci-

sions in different circuits. The right is subject, however, to the power of the court to deny reclamation and protect the seller by granting him a priority as an administrative expense for his claim arising out of the sale of the goods.

Subsection (c) [now (a)] adds a statute of limitations to the use by the trustee of the avoiding powers. The limitation is two years after his appointment, or the time the case is closed or dismissed, whichever, occurs later.

Legislative Statements. Section 546(a) of the House amendment is derived from section 546(c) of the Senate amendment. Section 546(c) of the House amendment is derived from section 546(b) of the Senate amendment. It applies to receipt of goods on credit as well as by cash sales. The section clarifies that a demand for reclamation must be made in writing anytime before 10 days after receipt of the goods by the debtor. The section also permits the court to grant the reclaiming creditor a lien or an administrative expense in lieu of turning over the property.

Codification Note. Should probably be designated as subsection (h). Section 222(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, added the new subsection (g) to section 546, without repealing former subsection (g), and section 222(b) refers to "546(h)".

Effective Date of 1998 Amendments. Pub.L. 105-183, § 5, 112 Stat. 518-19, provides, "This Act and the amendments made by this Act shall apply to any case brought under an applicable provision of title 11, United States Code, that is pending or commenced on or after the date of enactment of this Act [June 19, 1998]."

1994 Act. The amendment defines the applicable statute of limitation period under subsection (a)(1) as being two years from the entry of an order of relief or one year after the appointment of the first trustee if such appointment occurs before the expiration of the original two-year period. Adoption of this change is not intended to create any negative inference or implication regarding the status of prior law or interpretations of subsection (a)(1). The change is not intended to have any bearing on the equitable tolling doctrine where it has been determined that fraud has occurred. Further, the time limits are not in-

tended to be jurisdictional and can be extended by stipulation between the necessary parties to the action or proceeding.

The amendment to subsection (b) confirms that certain actions taken during bankruptcy proceedings pursuant to the Uniform Commercial Code to maintain a secured creditor's position as it was at the commencement of the case do not violate the automatic stay. Such actions could include the filing of a continuation statement and the filing of a financing statement. The steps taken by a secured creditor to ensure continued perfection merely maintain the status quo and do not improve the position of the secured creditor.

Subsection (c)(1) is amended to give trade creditors up to 10 extra days to utilize reclamation rights after the commencement of a bankruptcy case. The change addresses the concerns of trade creditors who claim they often have insufficient notice to exercise their reclamation rights.

Finally, the amendment adds subsection (g), permitting a bankruptcy court to hold a hearing and allow a buyer to return to the seller goods shipped before the commencement of the case if it is in the best interests of the estate. This will allow debtors to return unsold goods in order to offset their debts. The motion may

only be made by the trustee and must be made within 120 days after the order for relief.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554, effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(d), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of this section in chapter 9 cases, see section 901.
Automatic stay, see section 362.

Library References:

C.J.S. Bankruptcy §§ 123, 133, 134, 160-163, 180.
West's Key No. Digests, Bankruptcy ☞2701-2729.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 547. Preferences

(a) In this section—

(1) "inventory" means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease;

(2) "new value" means money or money's worth in goods, services, or new credit, or release by a transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the debtor or the trustee under any applicable law, including proceeds of such

property, but does not include an obligation substituted for an existing obligation;

(3) “receivable” means right to payment, whether or not such right has been earned by performance; and

(4) a debt for a tax is incurred on the day when such tax is last payable without penalty, including any extension.

(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property—

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made—

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if—

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

(c) The trustee may not avoid under this section a transfer—

(1) to the extent that such transfer was—

(A) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and

(B) in fact a substantially contemporaneous exchange;

(2) to the extent that such transfer was—

(A) in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee;

(B) made in the ordinary course of business or financial affairs of the debtor and the transferee; and

(C) made according to ordinary business terms;

(3) that creates a security interest in property acquired by the debtor—

(A) to the extent such security interest secures new value that was—

(i) given at or after the signing of a security agreement that contains a description of such property as collateral;

(ii) given by or on behalf of the secured party under such agreement;

(iii) given to enable the debtor to acquire such property; and

(iv) in fact used by the debtor to acquire such property; and

(B) that is perfected on or before 20 days after the debtor receives possession of such property;

(4) to or for the benefit of a creditor, to the extent that, after such transfer, such creditor gave new value to or for the benefit of the debtor—

(A) not secured by an otherwise unavoidable security interest; and

(B) on account of which new value the debtor did not make an otherwise unavoidable transfer to or for the benefit of such creditor;

(5) that creates a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all such transfers to the transferee caused a reduction, as of the date of the filing of the petition and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by such security interest exceeded the value of all security interests for such debt on the later of—

(A)(i) with respect to a transfer to which subsection (b)(4)(A) of this section applies, 90 days before the date of the filing of the petition; or

(ii) with respect to a transfer to which subsection (b)(4)(B) of this section applies, one year before the date of the filing of the petition; or

(B) the date on which new value was first given under the security agreement creating such security interest;

(6) that is the fixing of a statutory lien that is not avoidable under section 545 of this title;

(7) to the extent such transfer was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support; or

(8) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$600.

(d) The trustee may avoid a transfer of an interest in property of the debtor transferred to or for the benefit of a surety to secure reimbursement of such a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the trustee under subsection (b) of this section. The liability of such surety under such bond or obligation shall be discharged to the extent of the value of such property recovered by the trustee or the amount paid to the trustee.

(e)(1) For the purposes of this section—

(A) a transfer of real property other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, is perfected when a bona fide purchaser of such property from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest that is superior to the interest of the transferee; and

(B) a transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.

(2) For the purposes of this section, except as provided in paragraph (3) of this subsection, a transfer is made—

(A) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 10 days after, such time, except as provided in subsection (c)(3)(B);

(B) at the time such transfer is perfected, if such transfer is perfected after such 10 days; or

(C) immediately before the date of the filing of the petition, if such transfer is not perfected at the later of—

(i) the commencement of the case; or

(ii) 10 days after such transfer takes effect between the transferor and the transferee.

(3) For the purposes of this section, a transfer is not made until the debtor has acquired rights in the property transferred.

(f) For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

(g) For the purposes of this section, the trustee has the burden of proving the avoidability of a transfer under subsection (b) of this section, and the creditor or party in interest against whom recovery or avoidance is sought has the burden of proving the nonavoidability of a transfer under subsection (c) of this section.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2597; Pub.L. 98-353, Title III, §§ 310, 462, July 10, 1984, 98 Stat. 355, 377; Pub.L. 99-554, Title II, § 283(m), Oct. 27, 1986, 100 Stat. 3117; Pub.L. 103-394, Title II, § 203, Title III, § 304(f), October 22, 1994, 108 Stat. 4121, 4133.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section is a substantial modification of present law. It modernizes the preference provisions and brings them more into conformity with commercial practice and the Uniform Commercial Code.

Subsection (a) contains three definitions. Inventory, new value, and receivable are defined in their ordinary senses, but are defined to avoid any confusion or uncertainty surrounding the terms.

Subsection (b) is the operative provision of this section. It authorizes the trustee to avoid a transfer if five conditions are met. These are the five elements of a preference action. First, the transfer must be to or for the benefit of a creditor. Second, the transfer must be for or on account of an antecedent debt owed by the debtor before the transfer was made. Third, the transfer must have been made when the debtor was insolvent. Fourth, the transfer must have been made during the 90 days immediately preceding the commencement of the

case. If the transfer was to an insider, the trustee may avoid the transfer if it was made during the period that begins one year before the filing of the petition and ends 90 days before the filing, if the insider to whom the transfer was made had reasonable cause to believe the debtor was insolvent at the time the transfer was made.

Finally, the transfer must enable the creditor to whom or for whose benefit it was made to receive a greater percentage of his claim than he would receive under the distributive provisions of the bankruptcy code. Specifically, the creditor must receive more than he would if the case were a liquidation case, if the transfer had not been made, and if the creditor received payment of the debt to the extent provided by the provisions of the code [this title].

The phrasing of the final element changes the application of the greater percentage test from that employed under current law. Under this language, the court must focus on the relative distribution between classes as well as the amount that will be received by the members of the class of which the creditor is a member. The language also requires the court to focus on the allowability of the claim for which the preference was made. If the claim would have been entirely disallowed, for example, then the test of paragraph (5) will be met, because the creditor would have received nothing under the distributive provisions of the bankruptcy code [this title].

The trustee may avoid a transfer of a lien under this section even if the lien has been enforced by sale before the commencement of the case.

Subsection (b)(2) of this section in effect exempts from the preference rules payments by the debtor of tax liabilities, regardless of their priority status.

Subsection (c) contains exceptions to the trustee's avoiding power. If a creditor can qualify under any one of the exceptions, then he is protected to that extent. If he can qualify under several, he is protected by each to the extent that he can qualify under each.

The first exception is for a transfer that was intended by all parties to be a contemporaneous exchange for new value, and was in fact substantially contemporaneous. Normally, a check is a credit transaction. However, for the purposes of this paragraph, a transfer involving a check is considered to be "intended to be contemporaneous", and if the check is present-

ed for payment in the normal course of affairs, which the Uniform Commercial Code specifies as 30 days, U.C.C. § 3-503(2)(a), that will amount to a transfer that is "in fact substantially contemporaneous."

The second exception protects transfers in the ordinary course of business (or of financial affairs, where a business is not involved) transfers. For the case of a consumer, the paragraph uses the phrase "financial affairs" to include such nonbusiness activities as payment of monthly utility bills. If the debt on account of which the transfer was made was incurred in the ordinary course of both the debtor and the transferee, if the transfer was made not later than 45 days after the debt was incurred, if the transfer itself was made in the ordinary course of both the debtor and the transferee, and if the transfer was made according to ordinary business terms, then the transfer is protected. The purpose of this exception is to leave undisturbed normal financial relations, because it does not detract from the general policy of the preference section to discourage unusual action by either the debtor or his creditors during the debtor's slide into bankruptcy.

The third exception is for enabling loans in connection with which the debtor acquires the property that the loan enabled him to purchase after the loan is actually made.

The fourth exception codifies the net result rule in section 60c of current law [former section 96(c) of this title]. If the creditor and the debtor have more than one exchange during the 90-day period, the exchanges are netted out according to the formula in paragraph (4). Any new value that the creditor advances must be unsecured in order for it to qualify under this exception.

Paragraph (5) codifies the improvement in position test, and thereby overrules such cases as *DuBay v. Williams*, 417 F.2d 1277 (C.A.9, 1966), and *Grain Merchants of Indiana, Inc. v. Union Bank and Savings Co.*, 408 F.2d 209 (C.A.7, 1969). A creditor with a security interest in a floating mass, such as inventory or accounts receivable, is subject to preference attack to the extent he improves his position during the 90-day period before bankruptcy. The test is a two-point test, and requires determination of the secured creditor's position 90 days before the petition and on the date of the petition. If new value was first given after 90 days before the case, the date on which it was first given substitutes for the 90-day point.

Paragraph (6) excepts statutory liens validated under section 545 from preference attack. It also protects transfers in satisfaction of such liens, and the fixing of a lien under section 365(j), which protects a vendee whose contract to purchase real property from the debtor is rejected.

Subsection (d), derived from section 67a of the Bankruptcy Act [former section 107(a) of this title] permits the trustee to avoid a transfer to reimburse a surety that posts a bond to dissolve a judicial lien that would have been avoidable under this section. The second sentence protects the surety from double liability.

Subsection (e) determines when a transfer is made for the purposes of the preference section. Paragraph (1) defines when a transfer is perfected. For real property, a transfer is perfected when it is valid against a bona fide purchaser. For personal property and fixtures, a transfer is perfected when it is valid against a creditor on a simple contract that obtains a judicial lien after the transfer is perfected. "Simple contract" as used here is derived from Bankruptcy Act § 60a(4) [former section 96(a)(4) of this title]. Paragraph (2) specifies that a transfer is made when it takes effect between the transferor and the transferee if it is perfected at or within 10 days after that time. Otherwise, it is made when the transfer is perfected. If it is not perfected before the commencement of the case, it is made immediately before the commencement of the case. Paragraph (3) specifies that a transfer is not made until the debtor has acquired rights in the property transferred. This provision, more than any other in the section, overrules *DuBay and Grain Merchants*, and in combination with subsection (b)(2), overrules *In re King-Porter Co.*, 446 F.2d 722 (5th Cir. 1971).

Subsection (e) is designed to reach the different results under the 1962 version of Article 9 of the U.C.C. and under the 1972 version because different actions are required under each version in order to make a security agreement effective between the parties.

Subsection (f) creates a presumption of insolvency for the 90 days preceding the bankruptcy case. The presumption is as defined in Rule 301 of the Federal Rules of Evidence [Title 28, Judiciary and Judicial Procedure] made applicable in bankruptcy cases by sections 224 and 225 of the bill. The presumption requires the party against whom the presumption exists to come forward with some evidence to rebut the presumption, but the burden of proof remains

on the party in whose favor the presumption exists.

Legislative Statements. No limitation is provided for payments to commodity brokers as in section 766 of the Senate amendment other than the amendment to section 548 of title 11. Section 547(c)(2) protects most payments.

Section 547(b)(2) of the House amendment adopts a provision contained in the House bill and rejects an alternative contained in the Senate amendment relating to the avoidance of a preferential transfer that is payment of a tax claim owing to a governmental unit. As provided, section 106(c) of the House amendment overrules contrary language in the House report with the result that the Government is subject to avoidance of preferential transfers.

Contrary to language contained in the House report, payment of a debt by means of a check is equivalent to a cash payment, unless the check is dishonored. Payment is considered to be made when the check is delivered for purposes of sections 547(c)(1) and (2).

Section 547(c)(6) of the House bill is deleted and is treated in a different fashion in section 553 of the House amendment.

Section 547(c)(6) represents a modification of a similar provision contained in the House bill and Senate amendment. The exception relating to satisfaction of a statutory lien is deleted. The exception for a lien created under title 11 is deleted since such a lien is a statutory lien that will not be avoidable in a subsequent bankruptcy.

Section 547(e)(1)(B) is adopted from the House bill and Senate amendment without change. It is intended that the simple contract test used in this section will be applied as under section 544(a)(1) not to require a creditor to perfect against a creditor on a simple contract in the event applicable law makes such perfection impossible. For example, a purchaser from a debtor at an improperly noticed bulk sale may take subject to the rights of a creditor on a simple contract of the debtor for 1 year after the bulk sale. Since the purchaser cannot perfect against such a creditor on a simple contract, he should not be held responsible for failing to do the impossible. In the event the debtor goes into bankruptcy within a short time after the bulk sale, the trustee should not be able to use the avoiding powers under section 544(a)(1) or 547 merely because State law has made some transfers of personal property subject to the rights of a

creditor on a simple contract to acquire a judicial lien with no opportunity to perfect against such a creditor.

The House amendment deletes from the category of transfers on account of antecedent debts which may be avoided under the preference rules, section 547(b)(2), the exception in the Senate amendment for taxes owed to governmental authorities. However, for purposes of the "ordinary course" exception to the preference rules contained in section 547(c)(2), the House amendment specifies that the 45-day period referred to in section 547(c)(2)(B) is to begin running, in the case of taxes on the last due date, including extensions, of the return with respect to which the tax payment was made.

1994 Act. The amendment overrules the DePrizio line of cases (*In re V.N. DePrizio Construction Co.*, 874 F.2d 1186, 7th Cir.1989), which allowed trustees to recapture payments made to noninsider creditors a full year prior to a bankruptcy filing if an insider benefited from the transaction in some way. The amending legislation clarifies that non-insider transferees should not be subject to the preference provisions of the Bankruptcy Code beyond the 90-day statutory period.

Subsection (c)(3) has been amended to increase from 10 to 20 days the relation-back

period for perfecting purchase-money security interests.

Finally, the amendment to subsection (c)(7) specifies that bona fide alimony, maintenance or support payments are not subject to avoidance as preferences.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554, effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Appointment of trustee upon debtor's refusal to pursue cause of action under this section, see section 926.

Commencement of involuntary cases by transferees of voidable transfers, see section 303.

Disallowance of claims of entity that is transferee of avoidable transfer, see section 502.

Effect of dismissal, see section 349.

Exemptions, see section 522.

Voidable transfers in

Commodity broker liquidation cases, see section 764.

Stockbroker liquidation cases, see section 749.

Library References:

C.J.S. Bankruptcy § 135 et seq.

West's Key No. Digests, Bankruptcy ☞2601-2623, 2721-2724, 2726(3), 2726.1(2), 2727(2), 2728, 2729.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 548. Fraudulent transfers and obligations

(a)(1) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or *How long ago was transfer made?*

(B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and *was there fair consideration?*

(ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation; *was D insolvent?*

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; or

(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

(2) A transfer of a charitable contribution to a qualified religious or charitable entity or organization shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which—

(A) the amount of that contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or

(B) the contribution made by a debtor exceeded the percentage amount of gross annual income specified in subparagraph (A), if the transfer was consistent with the practices of the debtor in making charitable contributions.

(b) The trustee of a partnership debtor may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, to a general partner in the debtor, if the debtor was insolvent on the date such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.

(c) Except to the extent that a transfer or obligation voidable under this section is voidable under section 544, 545, or 547 of this title, a transferee or obligee of such a transfer or obligation that takes for value and in good faith has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.

(d)(1) For the purposes of this section, a transfer is made when such transfer is so perfected that a bona fide purchaser from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the commencement of the case, such transfer is made immediately before the date of the filing of the petition.

(2) In this section—

(A) "value" means property, or satisfaction or securing of a present or antecedent debt of the debtor, but does not include an unperformed promise to furnish support to the debtor or to a relative of the debtor;

elements of fraudulent transfers

order to void guarantee must show that co. incurred obligations with creditor in 1 yr of bank. filing & there was not fair consideration in return

(B) a commodity broker, forward contract merchant, stockbroker, financial institution, or securities clearing agency that receives a margin payment, as defined in section 101, 741 or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, takes for value to the extent of such payment;

(C) a repo participant that receives a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, in connection with a repurchase agreement, takes for value to the extent of such payment; and

(D) a swap participant that receives a transfer in connection with a swap agreement takes for value to the extent of such transfer.

(3) In this section, the term “charitable contribution” means a charitable contribution, as that term is defined in section 170(c) of the Internal Revenue Code of 1986, if that contribution—

(A) is made by a natural person; and

(B) consists of—

(i) a financial instrument (as that term is defined in section 731(c)(2)(C) of the Internal Revenue Code of 1986); or

(ii) cash.

(4) In this section, the term “qualified religious or charitable entity or organization” means—

(A) an entity described in section 170(c)(1) of the Internal Revenue Code of 1986; or

(B) an entity or organization described in section 170(c)(2) of the Internal Revenue Code of 1986.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2600; Pub.L. 97-222, § 5, July 27, 1982, 96 Stat. 236; Pub.L. 98-353, Title III, §§ 394, 463, July 10, 1984, 98 Stat. 365, 378; Pub.L. 99-554, Title II, § 283(n), Oct. 27, 1986, 100 Stat. 3117; Pub.L. 101-311, Title I, § 104, Title II, § 204, June 25, 1990, 104 Stat. 268, 269; Pub.L. 103-394, Title V, § 501(b), October 22, 1994, 108 Stat. 4142; Pub.L. 105-183, §§ 2, 3, June 19, 1998, 112 Stat. 517.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section is derived in large part from section 67d of the Bankruptcy Act [former section 107(d) of this title]. It permits the trustee to avoid transfers by the debtor in fraud of his creditors. Its history dates from the statute of 13 Eliz. c. 5 (1570).

The trustee may avoid fraudulent transfers or obligations if made with actual intent to hinder, delay, or defraud a **past** or future creditor. Transfers made for less than a reasonably equivalent consideration are also vulnerable if the debtor was or thereby becomes insolvent,

was engaged in business with an unreasonably small capital, or intended to incur debts that would be beyond his ability to repay.

The trustee of a partnership debtor may avoid any transfer of partnership property to a partner in the debtor if the debtor was or thereby became insolvent.

If a transferee's only liability to the trustee is under this section, and if he takes for value and in good faith, then subsection (c) grants him a lien on the property transferred, or other similar protection.

Subsection (d) specifies that for the purposes of fraudulent transfer section, a transfer is

made when it is valid against a subsequent bona fide purchaser. If not made before the commencement of the case, it is considered made immediately before then. Subsection (d) also defines “value” to mean property, or the satisfaction or securing of a present or antecedent debt, but does not include an unperformed promise to furnish support to the debtor or a relative of the debtor.

Legislative Statements. Section 548(d)(2) is modified to reflect general application of a provision contained in section 766 of the Senate amendment with respect to commodity brokers. In particular, section 548(d)(2)(B) of the House amendment makes clear that a commodity broker who receives a margin payment is considered to receive the margin payment in return for “value” for purposes of section 548.

Effective Date of 1998 Amendments. Pub.L. 105-183, § 5, 112 Stat. 518-19, provides, “This Act and the amendments made by this Act shall apply to any case brought under an applicable provision of title 11, United States Code, that is pending or commenced on

or after the date of enactment of this Act [June 19, 1998].”

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554, effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Appointment of trustee upon debtor's refusal to pursue cause of action under this section, see section 926.

Commencement of involuntary cases by transferees of voidable transfers, see section 303.

Disallowance of claims of entity that is transferee of avoidable transfer, see section 502.

Effect of dismissal, see section 349.

Exemptions, see section 522.

Voidable transfers in.

Commodity broker liquidation cases, see section 764.

Stockbroker liquidation cases, see section 749.

Library References:

C.J.S. Bankruptcy § 152 et seq.

West's Key No. Digests, Bankruptcy ⇨ 2641-2651, 2721-2724, 2726(4), 2726.1(3), 2727(3), 2728, 2729.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 549. Postpetition transactions

(a) Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer of property of the estate—

(1) that occurs after the commencement of the case; and

(2)(A) that is authorized only under section 303(f) or 542(c) of this title;

or

(B) that is not authorized under this title or by the court.

(b) In an involuntary case, the trustee may not avoid under subsection (a) of this section a transfer made after the commencement of such case but before the order for relief to the extent any value, including services, but not including satisfaction or securing of a debt that arose before the commencement of the case, is given after the commencement of the case in exchange for such transfer, notwithstanding any notice or knowledge of the case that the transferee has.

(c) The trustee may not avoid under subsection (a) of this section a transfer of real property to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value unless a copy or notice of the petition was filed, where a transfer of such real property may be recorded to perfect such transfer, before such transfer is so perfected that a bona fide purchaser of such property, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to the interest of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the property transferred to the extent of any present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected.

(d) An action or proceeding under this section may not be commenced after the earlier of—

- (1) two years after the date of the transfer sought to be avoided; or
- (2) the time the case is closed or dismissed.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2601; Pub.L. 98-353, Title III, § 464, July 10, 1984, 98 Stat. 379; Pub.L. 99-554, Title II, § 283(o), Oct. 27, 1986, 100 Stat. 3117; Pub.L. 103-394, Title V, § 501(d), October 22, 1994, 108 Stat. 4146.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section modifies section 70d of current law [former section 110(d) of this title]. It permits the trustee to avoid transfers of property that occur after the commencement of the case. The transfer must either have been unauthorized, or authorized under a section that protects only the transferor. Subsection (b) protects “involuntary gap” transferees to the extent of any value (including services, but not including satisfaction of a debt that arose before the commencement of the case), given after commencement in exchange for the transfer. Notice or knowledge of the transferee is irrelevant in determining whether he is protected under this provision.

Legislative Statements. Section 549 of the House amendment has been redrafted in order to incorporate sections 342(b) and (c) of the Senate amendment. Those sections have been consolidated and redrafted in section 549(c) of the House amendment. Section 549(d) of the House amendment adopts a pro-

vision contained in section 549(c) of the Senate amendment.

Codification. Section 464(a)(3) to (5) of Pub.L. 98-353 (H.R. 5174) purported to amend subsec. (a) of this section. Par. (3) directed that “made” be substituted for “that occurs”. Par. (4) directed that “to the extent” be substituted for “is valid against the trustee to the extent of”. Par. (5) directed that “is” be inserted before “given”.

The predecessor bill to H.R. 5174 was S. 445. Section 361 of the predecessor bill set out the amendments to subsecs. (a) and (b) of this section in such a manner that indicated that Congress did not intend to amend subsec. (a) of this section by Pub.L. 98-353 § 464(a)(3) to (5).

S. 445, § 361, contained subsecs. (a), (b), and (c). Only subsecs. (a) and (b) thereof are pertinent here. Such subsecs. (a) and (b) read as follows:

SEC. 361. (a) Section 549(a) of title 11 of the United States Code is amended—

(1) by striking out “(b) and (c)” and inserting in lieu thereof “(b) or (c)”; and

(2) in paragraph (2)(A), by inserting “only” after “authorized”.

(b) Section 549(b) of title 11 of the United States Code is amended by—

(1) inserting “the trustee may not avoid under subsection (a) of this section,” after “involuntary case,”;

(2) striking out “that occurs” and inserting in lieu thereof “made”;

(3) striking out “is valid against the trustee to the extent of” and inserting in lieu thereof “to the extent”; and

(4) inserting “is” before “given”.

Section 464 of Pub.L. 98-353 contained subsecs. (a) and (c); no subsec. (b) appeared therein. Only subsec. (a) is pertinent here. Subsec. (a) read as follows:

SEC. 464. (a) Section 549(a) of title 11 of the United States Code is amended—

(1) by striking out “(b) and (c)” and inserting in lieu thereof “(b) or (c)”; and

(2) in paragraph (2)(A), by inserting “only” after “authorized”.

(3) striking out “that occurs” and inserting in lieu thereof “made”;

(4) striking out “is valid against the trustee to the extent of” and inserting in lieu thereof “to the extent”; and

(5) inserting “is” before “given”.

A comparison thus reveals that Congress had intended subsec. (b)(1) to (4) of section 361 of S. 445 to amend subsec. (b) of this section and

to restrict to subsec. (b) of this section the amendments directed to be made by Pub.L. 98-353 § 464(a)(3) to (5). Accordingly, the amendments specified by Pub.L. 98-353 § 464(a)(3) to (5) were not executed to subsec. (a) of this section. Nor were the amendments specified by Pub.L. 98-353 § 464(a)(3) to (5) executed to subsec. (b) of this section as the probable intent of Congress since this would result in an unintelligible provision being set out as subsec. (b) absent the unenacted amendments which appeared only in the predecessor bill, i.e., S. 445, § 361(b)(1) and (2).

Such amendments were later effectuated by Pub.L. 99-554.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

Effective Date of 1986 Amendments; Savings Provisions; Quarterly fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of subsecs. (a), (c) and (d) of this section in chapter 9 cases, see section 901.
Appointment of trustee upon debtor's refusal to pursue cause of action under this section, see section 926.

Commencement of involuntary cases by transferees of voidable transfers, see section 303.

Disallowance of claims of entity that is transferee of avoidable transfer, see section 502.

Effect of dismissal, see section 349.

Exemptions, see section 522.

Voidable transfers in,

Commodity broker liquidation cases, see section 764.

Stockbroker liquidation cases, see section 749.

Library References:

C.J.S. Bankruptcy §§ 131 et seq.

West's Key No. Digests, Bankruptcy Ⓒ2588, 2721-2724, 2728, 2729.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 550. Liability of transferee of avoided transfer

(a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—

(1) ~~the initial transferee~~ of such transfer or the entity for whose benefit such transfer was made; or

(2) any immediate or mediate transferee of such initial transferee.

(b) **The trustee may not recover under section (a)(2) of this section from—**

(1) **a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or**

(2) **any immediate or mediate good faith transferee of such transferee.**

(c) If a transfer made between 90 days and one year before the filing of the petition—

(1) is avoided under section 547(b) of this title; and

(2) was made for the benefit of a creditor that at the time of such transfer was an insider;

the trustee may not recover under subsection (a) from a transferee that is not an insider.

(d) The trustee is entitled to only a single satisfaction under subsection (a) of this section.

(e)(1) A good faith transferee from whom the trustee may recover under subsection (a) of this section has a lien on the property recovered to secure the lesser of—

(A) the cost, to such transferee, of any improvement made after the transfer, less the amount of any profit realized by or accruing to such transferee from such property; and

(B) any increase in the value of such property as a result of such improvement, of the property transferred.

(2) In this subsection, “improvement” includes—

(A) physical additions or changes to the property transferred;

(B) repairs to such property;

(C) payment of any tax on such property;

(D) payment of any debt secured by a lien on such property that is superior or equal to the rights of the trustee; and

(E) preservation of such property.

(f) An action or proceeding under this section may not be commenced after the earlier of—

(1) one year after the avoidance of the transfer on account of which recovery under this section is sought; or

(2) the time the case is closed or dismissed.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2601; Pub.L. 98-353, Title III, § 465, July 10, 1984, 98 Stat. 379; Pub.L. 103-394, Title II, § 202, October 22, 1994, 108 Stat. 4121.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 550 prescribes the liability of a transferee of an avoided transfer, and enunciates the separation between the concepts of avoiding a transfer and recovering from the transferee. Subsection (a) permits the trustee to recover from the initial transferee of an avoided transfer or from any immediate or mediate transferee of the initial transferee. The words “to the extent that” in the lead in to this subsection are designed to incorporate the protection of transferees found in proposed 11 U.S.C. 549(b) and 548(c). Subsection (b) limits the liability of an immediate or mediate transferee of the initial transferee if such secondary transferee takes for value, in good faith and without knowledge of the voidability of the transfer. An immediate or mediate good faith transferee of a protected secondary transferee is also shielded from liability. This subsection is limited to the trustee’s right to recover from subsequent transferees under subsection (a)(2). It does not limit the trustee’s rights against the initial transferee under subsection (a)(1). The phrase “good faith” in this paragraph is intended to prevent a transferee from whom the trustee could recover from transferring the recoverable property to an innocent transferee, and receiving a re-transfer from him, that is, “washing” the transaction through an innocent third party. In order for the transferee to be excepted from liability under this paragraph, he himself must be a good faith transferee. Subsection (c) is a further limitation on recovery. It specifies that the trustee is entitled to only one satisfactory, under subsection (a), even if more than one transferee is liable.

Subsection (d) protects good faith transferees, either initial or subsequent, to the extent of the lesser of the cost of any improvement the transferee makes in the transferred property and the increase in value of the property as a result of the improvement. Paragraph (2) of the subsection defines improvement to include physical additions or changes to the property, repairs, payment of taxes on the property, payment of a debt secured by a lien on the property, discharge of a lien on the property, and preservation of the property.

Subsection (e) establishes a statute of limitations on avoidance by the Trustee. The limitation is one year after the avoidance of the transfer or the time the case is closed or dismissed, whichever is earlier.

Legislative Statements. Section 550(a)(1) of the House amendment has been modified in order to permit recovery from an entity for whose benefit an avoided transfer is made in addition to a recovery from the initial transferee of the transfer. Section 550(c) would still apply, and the trustee is entitled only to a single satisfaction. The liability of a transferee under section 550(a) applies only “to the extent that a transfer is avoided”. This means that liability is not imposed on a transferee to the extent that a transferee is protected under a provision such as section 548(c) which grants a good faith transferee for value of a transfer that is avoided only as a fraudulent transfer, a lien on the property transferred to the extent of value given.

Section 550(b) of the House amendment is modified to indicate that value includes satisfaction or securing of a present antecedent debt. This means that the trustee may not recover under subsection (a)(2) from a subsequent transferee that takes for “value”, provided the subsequent transferee also takes in good faith and without knowledge of the transfer avoided.

Section 550(e) of the House amendment is derived from section 550(e) of the Senate amendment.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Allowance of claims or interests, see section 502.

Applicability of this section in chapter 9 cases, see section 901.

Appointment of trustee upon debtor's refusal to pursue cause of action under this section, see section 926.

Effect of dismissal, see section 349.

Exemptions, see section 522.

Library References:

C.J.S. Bankruptcy § 134.

West's Key No. Digests, Bankruptcy Ⓒ2701-2729.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 551. Automatic preservation of avoided transfer

Any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or any lien void under section 506(d) of this title, is preserved for the benefit of the estate but only with respect to property of the estate.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2602.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section is a change from present law. It specifies that any avoided transfer is automatically preserved for the benefit of the estate. Under current law, the court must determine whether or not the transfer should be preserved. The operation of the section is automatic, unlike current law, even though preservation may not benefit the estate in every instance. A preserved lien may be abandoned by the trustee under proposed 11 U.S.C. 554 if the preservation does not benefit the estate. The section as a whole

prevents junior lienors from improving their position at the expense of the estate when a senior lien is avoided.

Legislative Statements. Section 551 is adopted from the House bill and the alternative in the Senate amendment is rejected. The section is clarified to indicate that a transfer avoided or a lien that is void is preserved for the benefit of the estate, but only with respect to property of the estate. This prevents the trustee from asserting an avoided tax lien against after acquired property of the debtor.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Effect of dismissal, see section 349.

Exemptions, see section 522.

Library References:

C.J.S. Bankruptcy § 133.

West's Key No. Digests, Bankruptcy Ⓒ2706.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

 **§ 552. Postpetition effect of security interest**

(a) Except as provided in subsection (b) of this section, property acquired by the estate or by the debtor after the commencement of the case is not subject to

any lien resulting from any security agreement entered into by the debtor before the commencement of the case.

✓ (b)(1) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, product, offspring, or profits of such property, then such security interest extends to such proceeds, product, offspring, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable non-bankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

(2) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, and notwithstanding section 546(b) of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to amounts paid as rents of such property or the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties, then such security interest extends to such rents and such fees, charges, accounts, or other payments acquired by the estate after the commencement of the case to the extent provided in such security agreement, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2602; Pub.L. 98-353, Title III, § 466, July 10, 1984, 98 Stat. 380; Pub.L. 103-394, Title II, § 214(a), October 22, 1994, 108 Stat. 4126.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Under the Uniform Commercial Code, article 9, creditors may take security interests in after-acquired property. Section 552 governs the effect of such a prepetition security interest in postpetition property. It applies to all security interests as defined in section 101(37) of the bankruptcy code [this title] not only to U.C.C. security interests.

As a general rule, if a security agreement is entered into before the commencement of the case, then property that the estate acquires is not subject to the security interest created by a provision in the security agreement extending the security interest to after-acquired property. Subsection (b) provides an important exception consistent with the Uniform Commercial Code. If the security agreement extends to proceeds, product, offspring, rents, or profits of the property in question, then the proceeds would continue to be subject to the security interest

pursuant to the terms of the security agreement and provisions of applicable law, except to the extent that where the estate acquires the proceeds at the expense of other creditors holding unsecured claims, the expenditure resulted in an improvement in the position of the secured party.

The exception covers the situation where raw materials, for example, are converted into inventory, or inventory into accounts, at some expense to the estate, thus depleting the fund available for general unsecured creditors, but is limited to the benefit inuring to the secured party thereby. Situations in which the estate incurs expense in simply protecting collateral are governed by 11 U.S.C. 506(c). In ordinary circumstances, the risk of loss in continued operations will remain with the estate.

Legislative Statements. Section 552(a) is derived from the House bill and the alternative provision in the Senate amendment is rejected. Section 552(b) represents a compromise be-

tween the House bill and the Senate amendment. Proceeds coverage, but not after acquired property clauses, are valid under title 11. The provision allows the court to consider the equities in each case. In the course of such consideration the court may evaluate any expenditures by the estate relating to proceeds and any related improvement in position of the secured party. Although this section grants a secured party a security interest in proceeds, product, offspring, rents, or profits, the section is explicitly subject to other sections of title 11. For example, the trustee or debtor in possession may use, sell, or lease proceeds, product, offspring, rents or profits under section 363.

1994 Act. The amendment adds a new subsection (b)(2) covering lenders who have a valid security interest which extends to the underlying property and the postpetition rents. Under this new provision, lenders may have

valid security interests in postpetition rents for bankruptcy purposes notwithstanding their failure to have fully perfected their security interest under applicable state law.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Library References:

C.J.S. Bankruptcy § 121.

West's Key No. Digests, Bankruptcy ☞2573.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 553. Setoff

(a) Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case, except to the extent that—

- (1) the claim of such creditor against the debtor is disallowed;
- (2) such claim was transferred, by an entity other than the debtor, to such creditor—
 - (A) after the commencement of the case; or
 - (B)(i) after 90 days before the date of the filing of the petition; and
 - (ii) while the debtor was insolvent; or
- (3) the debt owed to the debtor by such creditor was incurred by such creditor—
 - (A) after 90 days before the date of the filing of the petition;
 - (B) while the debtor was insolvent; and
 - (C) for the purpose of obtaining a right of setoff against the debtor.

(b)(1) Except with respect to a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(14), 365(h), 546(h) or 365(i)(2) of this title, if a creditor offsets a mutual debt owing to the debtor against a claim against the debtor on or within 90 days before the date of the filing of the petition, then the trustee may recover from such creditor the amount so offset to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of—

(A) 90 days before the date of the filing of the petition; and

(B) the first date during the 90 days immediately preceding the date of the filing of the petition on which there is an insufficiency.

(2) In this subsection, “insufficiency” means amount, if any, by which a claim against the debtor exceeds a mutual debt owing to the debtor by the holder of such claim.

(c) For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2602; Pub.L. 98-353, Title III, §§ 395, 467, July 10, 1984, 98 Stat. 365, 380; Pub.L. 101-311, Title I, § 105, June 25, 1990, 104 Stat. 268; Pub.L. 103-394, Title II, § 205(b), 222(b), Title V, § 501(d)(19), October 22, 1994, 108 Stat. 4123, 4129, 4146.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section preserves, with some changes, the right of setoff in bankruptcy cases now found in section 68 of the Bankruptcy Act [former section 108 of this title]. One exception to the right is the automatic stay, discussed in connection with proposed 11 U.S.C. 362. Another is the right of the trustee to use property under section 363 that is subject to a right of setoff.

The section states that the right of setoff is unaffected by the bankruptcy code [this title] except to the extent that the creditor's claim is disallowed, the creditor acquired (other than from the debtor) the claim during the 90 days preceding the case while the debtor was insolvent, the debt being offset was incurred for the purpose of obtaining a right of setoff, while the debtor was insolvent and during the 90-day prebankruptcy period, or the creditor improved his position in the 90-day period (similar to the improvement in position test found in the preference section 547(c)(5)). Only the last exception is an addition to current law.

As under section 547(f), the debtor is presumed to have been insolvent during the 90 days before the case.

Legislative Statements. Section 553 of the House amendment is derived from a similar provision contained in the Senate amendment, but is modified to clarify application of a two-point test with respect to setoffs.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Allowance of claims or interests, see section 502.

Applicability of this section in chapter 9 cases, see section 901.

Determination of secured status, see section 506.

Effect of dismissal, see section 349.

Recovered property as exempt, see section 522.

Library References:

C.J.S. Bankruptcy §§ 164 et seq., 245.
West's Key No. Digests, Bankruptcy Ⓒ2671-2680.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 554. Abandonment of property of the estate

(a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(c) Unless the court orders otherwise, any property scheduled under section 521(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

(d) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2603; Pub.L. 98-353, Title III, § 463, July 10, 1984, 98 Stat. 380; Pub.L. 99-554, Title II, § 283(p), Oct. 27, 1986, 100 Stat. 3118.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Under this section the court may authorize the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate. Abandonment, may be to any party with a possessory interest in the property abandoned. In order to aid administration of the case, subsection (b) deems the court to have authorized abandonment of any property that is scheduled under section 521(1) and that is not administered before the case is closed. That property is deemed abandoned to the debtor. Subsection (c) specifies that if property is neither abandoned nor administered it remains property of the estate.

Legislative Statements. Section 554(b) is new and permits a party in interest to request the court to order the trustee to abandon prop-

erty of the estate that is burdensome to the estate or that is of inconsequential value to the estate.

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Redemption, see section 722.

Library References:

C.J.S. Bankruptcy §§ 188, 189.
West's Key No. Digests, Bankruptcy Ⓒ3131-3137.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 555. Contractual right to liquidate a securities contract

The exercise of a contractual right of a stockbroker, financial institution, or securities clearing agency to cause the liquidation of a securities contract, as defined in section 741 of this title, because of a condition of the kind specified in section 365(e)(1) of this title shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title unless such order is authorized under the provisions of the Securities Investor Protection Act of 1970 or any statute administered by the Securities and Exchange Commission. As used in this section, the term “contractual right” includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency.

Added Pub.L. 97-222, § 6(a), July 27, 1982, 96 Stat. 236; Pub.L. 98-353, Title III, § 469, July 10, 1984, 98 Stat. 380; Pub.L. 103-394, Title V, § 501(b)(6), (d)(20), October 22, 1994, 108 Stat. 4143, 4146.

Historical and Revision Notes

References in Text. The Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), referred to in text, is Pub.L. 91-598, Dec. 30, 1970, 84 Stat. 1636, which is classified generally to chapter 2B-1 (§ 78aaa et seq.) of Title 15, Commerce and Trade.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy § 99.

West's Key No. Digests, Bankruptcy ☞2367.

§ 556. Contractual right to liquidate a commodities contract or forward contract

The contractual right of a commodity broker or forward contract merchant to cause the liquidation of a commodity contract, as defined in section 761 of this title, or forward contract because of a condition of the kind specified in section 365(e)(1) of this title, and the right to a variation or maintenance margin payment received from a trustee with respect to open commodity contracts or forward contracts, shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by the order of a court in any proceeding under this title. As used in this section, the term “contractual right” includes a right set forth in a rule or bylaw of a clearing organization or contract market or in a resolution of the governing board thereof and a right, whether or not evidenced in writing,

arising under common law, under law merchant or by reason of normal business practice.

Added Pub.L. 97-222, § 6(a), July 27, 1982, 96 Stat. 236; Pub.L. 101-311, Title II, § 205, June 25, 1990, 104 Stat. 270; Pub.L. 103-394, Title V, § 501(b)(7), October 22, 1994, 108 Stat. 4143.

Historical and Revision Notes

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective	Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”
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Library References:

C.J.S. Bankruptcy § 99.

West's Key No. Digests, Bankruptcy ⇨2367.

§ 557. Expedited determination of interests in, and abandonment or other disposition of grain assets

(a) This section applies only in a case concerning a debtor that owns or operates a grain storage facility and only with respect to grain and the proceeds of grain. This section does not affect the application of any other section of this title to property other than grain and proceeds of grain.

(b) In this section—

(1) “grain” means wheat, corn, flaxseed, grain sorghum, barley, oats, rye, soybeans, other dry edible beans, or rice;

(2) “grain storage facility” means a site or physical structure regularly used to store grain for producers, or to store grain acquired from producers for resale; and

(3) “producer” means an entity which engages in the growing of grain.

(c)(1) Notwithstanding sections 362, 363, 365, and 554 of this title, on the court's own motion the court may, and on the request of the trustee or an entity that claims an interest in grain or the proceeds of grain the court shall, expedite the procedures for the determination of interests in and the disposition of grain and the proceeds of grain, by shortening to the greatest extent feasible such time periods as are otherwise applicable for such procedures and by establishing, by order, a timetable having a duration of not to exceed 120 days for the completion of the applicable procedure specified in subsection (d) of this section. Such time periods and such timetable may be modified by the court, for cause, in accordance with subsection (f) of this section.

(2) The court shall determine the extent to which such time periods shall be shortened, based upon—

(A) any need of an entity claiming an interest in such grain or the proceeds of grain for a prompt determination of such interest;

(B) any need of such entity for a prompt disposition of such grain;

(C) the market for such grain;

(D) the conditions under which such grain is stored;

(E) the costs of continued storage or disposition of such grain;

- (F) the orderly administration of the estate;
 - (G) the appropriate opportunity for an entity to assert an interest in such grain; and
 - (H) such other considerations as are relevant to the need to expedite such procedures in the case.
- (d) The procedures that may be expedited under subsection (c) of this section include—
- (1) the filing of and response to—
 - (A) a claim of ownership;
 - (B) a proof of claim;
 - (C) a request for abandonment;
 - (D) a request for relief from the stay of action against property under section 362(a) of this title;
 - (E) a request for determination of secured status;
 - (F) a request for determination of whether such grain or the proceeds of grain—
 - (i) is property of the estate;
 - (ii) must be turned over to the estate; or
 - (iii) may be used, sold, or leased; and
 - (G) any other request for determination of an interest in such grain or the proceeds of grain;
 - (2) the disposition of such grain or the proceeds of grain, before or after determination of interests in such grain or the proceeds of grain, by way of—
 - (A) sale of such grain;
 - (B) abandonment;
 - (C) distribution; or
 - (D) such other method as is equitable in the case;
 - (3) subject to sections 701, 702, 703, 1104, 1202, and 1302 of this title, the appointment of a trustee or examiner and the retention and compensation of any professional person required to assist with respect to matters relevant to the determination of interests in or disposition of such grain or the proceeds of grain; and
 - (4) the determination of any dispute concerning a matter specified in paragraph (1), (2), or (3) of this subsection.
- (e)(1) Any governmental unit that has regulatory jurisdiction over the operation or liquidation of the debtor or the debtor's business shall be given notice of any request made or order entered under subsection (c) of this section.
- (2) Any such governmental unit may raise, and may appear and be heard on, any issue relating to grain or the proceeds of grain in a case in which a request is made, or an order is entered, under subsection (c) of this section.

(3) The trustee shall consult with such governmental unit before taking any action relating to the disposition of grain in the possession, custody, or control of the debtor or the estate.

(f) The court may extend the period for final disposition of grain or the proceeds of grain under this section beyond 120 days if the court finds that—

(1) the interests of justice so require in light of the complexity of the case; and

(2) the interests of those claimants entitled to distribution of grain or the proceeds of grain will not be materially injured by such additional delay.

(g) Unless an order establishing an expedited procedure under subsection (c) of this section, or determining any interest in or approving any disposition of grain or the proceeds of grain, is stayed pending appeal—

(1) the reversal or modification of such order on appeal does not affect the validity of any procedure, determination, or disposition that occurs before such reversal or modification, whether or not any entity knew of the pendency of the appeal; and

(2) neither the court nor the trustee may delay, due to the appeal of such order, any proceeding in the case in which such order is issued.

(h)(1) The trustee may recover from grain and the proceeds of grain the reasonable and necessary costs and expenses allowable under section 503(b) of this title attributable to preserving or disposing of grain or the proceeds of grain, but may not recover from such grain or the proceeds of grain any other costs or expenses.

(2) Notwithstanding section 326(a) of this title, the dollar amounts of money specified in such section include the value, as of the date of disposition, of any grain that the trustee distributes in kind.

(i) In all cases where the quantity of a specific type of grain held by a debtor operating a grain storage facility exceeds ten thousand bushels, such grain shall be sold by the trustee and the assets thereof distributed in accordance with the provisions of this section.

Added Pub.L. 98-353, Title III, § 352(a), July 10, 1984, 98 Stat. 359; Pub.L. 99-554, Title II, § 257(p), Oct. 27, 1986, 100 Stat. 3115.

Historical and Revision Notes

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees.

Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(p), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of

Pub.L. 99-554, set out as a note under section 581 of Title 28.

Effective Date. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy §§ 169-171, 187.

West's Key No. Digests, Bankruptcy ⌘2741-2745, 3066(1).

§ 558. Defenses of the estate

The estate shall have the benefit of any defense available to the debtor as against any entity other than the estate, including statutes of limitation, statutes of frauds, usury, and other personal defenses. A waiver of any such defense by the debtor after the commencement of the case does not bind the estate.

Added Pub.L. 98-353, Title III, § 470(a), July 10, 1984, 98 Stat. 380.

Historical and Revision Notes

Effective Date. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy § 27.

West's Key No. Digests, Bankruptcy ⌘2152.1.

§ 559. Contractual right to liquidate a repurchase agreement

The exercise of a contractual right of a repo participant to cause the liquidation of a repurchase agreement because of a condition of the kind specified in section 365(e)(1) of this title shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title, unless, where the debtor is a stockbroker or securities clearing agency, such order is authorized under the provisions of the Securities Investor Protection Act of 1970 or any statute administered by the Securities and Exchange Commission. In the event that a repo participant liquidates one or more repurchase agreements with a debtor and under the terms of one or more such agreements has agreed to deliver assets subject to repurchase agreements to the debtor, any excess of the market prices received on liquidation of such assets (or if any such assets are not disposed of on the date of liquidation of such repurchase agreements, at the prices available at the time of liquidation of such repurchase agreements from a generally recognized source or the most recent closing bid quotation from such a source) over the sum of the stated repurchase prices and all expenses in connection with the liquidation of such repurchase agreements shall be deemed property of the estate, subject to the available rights of setoff. As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw, applicable to each party to the repurchase agreement, of a national securities exchange, a national securities association, or a securities clearing agency, and a right, whether or not evidenced in writing, arising under common law, under law merchant or by reason of normal business practice.

Added Pub.L. 98-353, Title III, § 396(a), July 10, 1984, 98 Stat. 366. Amended by Pub.L. 103-394, Title V, § 501(d)(21), October 22, 1994, 108 Stat. 4146.

Historical and Revision Notes

References in Text. The Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), referred to in text, is Pub.L. 91-598, Dec. 30, 1970, 84 Stat. 1636, as amended, which is classified generally to chapter 2B-1 (§ 78aaa et seq.) of Title 15, Commerce and Trade.

Effective Date. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy § 99.
West's Key No. Digests, Bankruptcy ⇨2367.

§ 560. Contractual right to terminate a swap agreement

The exercise of any contractual right of any swap participant to cause the termination of a swap agreement because of a condition of the kind specified in section 365(e)(1) of this title or to offset or net out any termination values or payment amounts arising under or in connection with any swap agreement shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title. As used in this section, the term “contractual right” includes a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

Added Pub.L. 101-311, Title I, § 106(a), June 25, 1990, 104 Stat. 268.

Library References:

C.J.S. Bankruptcy § 99.
West's Key No. Digests, Bankruptcy ⇨2367.

CHAPTER 7—LIQUIDATION

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Amount received for claim through liquidation under this chapter as standard for confirmation requirement in

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Chapters 1, 3 and 5 of this title applicable in case under this chapter, see section 103.

Commencement of involuntary cases, see section 303.

Conversion to this chapter from

Chapter 11, see section 1112.

Chapter 13, see section 1307.

Denial of discharge under this chapter as affecting operation of injunction, see section 524.

Distribution of certain proceeds and property under this chapter as requirement for confirmation of plan, see section 1173.

Duration of automatic stay in case concerning an individual under this chapter, see section 362.

Effect of distribution other than under this title, see section 508.

Eligibility to serve as trustee, see section 321.

Employment of professional persons, see section 327.

Executory contracts and unexpired leases, see section 365.

Limitation on compensation of trustee, see section 326.

Liquidation in railroad reorganization case as if under this chapter, see section 1174.

Meetings of creditors and equity security holders and oral examination of debtor, see 11 USCA § 341.

Objection to allowance of claims by creditor of partner in partnership that is debtor under this chapter, see section 502.

Payment of trustee from filing fee, see section 330.

Persons who may be debtors under this chapter, see section 109.

Property of estate in cases converted from chapter 13, see section 1306.

Recommendation by trustee of conversion from chapter 11 to this chapter, see section 1106.

Special tax provisions, see section 346.

Stay of action against chapter 13 codebtor in cases converted to this chapter, see section 1301.

Transfers enabling creditor to receive more than under this chapter, see section 547.

Unclaimed property, see section 347.

Historical and Revision Notes

2000 Amendments. Pub.L. 106-554, § 1(a)(5) [Title I, § 112(d)], Dec. 21, 2000, 114 Stat. 2763, 2763, , added items relating to subchapter V and sections 781 to 784 of this title.

Effective Date of 1984 Amendments. Item 703 added by Pub.L. 98-353. See section 553 of Pub.L. 98-353, Title III, July 10, 1984,

98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

Cross References

Subchapter applicable only in case under this chapter, see section 103.

§ 701. Interim trustee

(a)(1) Promptly after the order for relief under this chapter, the United States trustee shall appoint one disinterested person that is a member of the panel of private trustees established under section 586(a)(1) of title 28 or that is serving as trustee in the case immediately before the order for relief under this chapter to serve as interim trustee in the case.

(2) If none of the members of such panel is willing to serve as interim trustee in the case, then the United States trustee may serve as interim trustee in the case.

(b) The service of an interim trustee under this section terminates when a trustee elected or designated under section 702 of this title to serve as trustee in the case qualifies under section 322 of this title.

(c) An interim trustee serving under this section is a trustee in a case under this title.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2604; Pub.L. 99-554, Title II, § 215, Oct. 27, 1986, 100 Stat. 3100.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section requires the court to appoint an interim trustee. The appointment must be made from the panel of private trustees established and maintained by the Director of the Administrative Office under proposed 28 U.S.C. 604(e).

Subsection (a) requires the appointment of an interim trustee to be made promptly after the order for relief, unless a trustee is already serving in the case, such as before a conversion from a reorganization to a liquidation case.

Subsection (b) specifies that the appointment of an interim trustee expires when the permanent trustee is elected or designated under section 702.

Subsection (c) makes clear that an interim trustee is a trustee in a case under the bankruptcy code [this title].

Subsection (d) provides that in a commodity broker case where speed is essential the interim trustee must be appointed by noon of the business day immediately following the order for relief.

Legislative Statements. The House amendment deletes section 701(d) of the Senate amendment. It is anticipated that the

Rules of Bankruptcy Procedure will require the appointment of an interim trustee at the earliest practical moment in commodity broker bankruptcies, but no later than noon of the day after the date of the filing of the petition, due to the volatility of such cases.

1986 Amendment. Subsec. (a). Pub.L. 99-554, § 215, designated existing provisions as par. (1), and, as so designated, substituted “the United States trustee shall appoint” for “the court shall appoint”, “586(a)(1)” for “604(f)”, “that is serving” for “that was serving”, and added par. (2).

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11, Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date

of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees.

Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 215, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 215, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 215, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and,

except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 215, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Cross References

Appointment of interim trustee after commencement of involuntary case, see section 303.
Disinterested person defined, see section 101.
Effect of conversion, see section 348.
Qualification of trustee, see section 322.

Library References:

C.J.S. Bankruptcy § 195.
West's Key No. Digests, Bankruptcy ☞ 3002.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 702. Election of trustee

(a) A creditor may vote for a candidate for trustee only if such creditor—

(1) holds an allowable, undisputed, fixed, liquidated, unsecured claim of a kind entitled to distribution under section 726(a)(2), 726(a)(3), 726(a)(4), 752(a), 766(h), or 766(i) of this title;

(2) does not have an interest materially adverse, other than an equity interest that is not substantial in relation to such creditor's interest as a creditor, to the interest of creditors entitled to such distribution; and

(3) is not an insider.

(b) At the meeting of creditors held under section 341 of this title, creditors may elect one person to serve as trustee in the case if election of a trustee is requested by creditors that may vote under subsection (a) of this section, and that hold at least 20 percent in amount of the claims specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section.

(c) A candidate for trustee is elected trustee if—

(1) creditors holding at least 20 percent in amount of the claims of a kind specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section vote; and

(2) such candidate receives the votes of creditors holding a majority in amount of claims specified in subsection (a)(1) of this section that are held by creditors that vote for a trustee.

(d) If a trustee is not elected under this section, then the interim trustee shall serve as trustee in the case.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2604; Pub.L. 97-222, § 7, July 27, 1982, 96 Stat. 237; Pub.L. 98-353, Title III, § 472, July 10, 1984, 98 Stat. 380.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) of this section specifies which creditors may vote for a trustee. Only a creditor that holds an allowable, undisputed, fixed, liquidated, unsecured claim that is not entitled to priority, that does not have an interest materially adverse to the interest of general unsecured creditors, and that is not an insider may vote for a trustee. The phrase "materially adverse" is currently used in the Rules of Bankruptcy Procedure, rule 207(d). The application of the standard requires a balancing of various factors, such as the nature of the adversity. A creditor with a very small equity position would not be excluded from voting solely because he holds a small equity in the debtor.

The Rules of Bankruptcy Procedure also currently provide for temporary allowance of claims, and will continue to do so for the purposes of determining who is eligible to vote under this provision.

Subsection (b) permits creditors at the meeting of creditors to elect one person to serve as trustee in the case. Creditors holding at least 20 percent in amount of the claims specified in the preceding paragraph must request election before creditors may elect a trustee. Subsection (c) specifies that a candidate for trustee is elected trustee if creditors holding at least 20 percent in amount of those claims actually vote, and if the candidate receives a majority in amount of votes actually cast.

Subsection (d) specifies that if a trustee is not elected, then the interim trustee becomes the permanent trustee and serves in the case permanently.

Legislative Statements. The House amendment adopts section 702(a)(2) of the Senate amendment. An insubstantial equity interest does not disqualify a creditor from voting for a candidate for trustee.

Cross References

Insider defined, see section 101.

Qualification of trustee, see section 322.

Time for bringing action, see section 546.

Library References:

C.J.S. Bankruptcy § 195.

West's Key No. Digests, Bankruptcy ⇨3004.1, 3005.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 703. Successor trustee

(a) If a trustee dies or resigns during a case, fails to qualify under section 322 of this title, or is removed under section 324 of this title, creditors may elect, in the manner specified in section 702 of this title, a person to fill the vacancy in the office of trustee.

(b) Pending election of a trustee under subsection (a) of this section, if necessary to preserve or prevent loss to the estate, the United States trustee may appoint an interim trustee in the manner specified in section 701(a).

(c) If creditors do not elect a successor trustee under subsection (a) of this section or if a trustee is needed in a case reopened under section 350 of this title, then the United States trustee—

(1) shall appoint one disinterested person that is a member of the panel of private trustees established under section 586(a)(1) of title 28 to serve as trustee in the case; or

(2) may, if none of the disinterested members of such panel is willing to serve as trustee, serve as trustee in the case.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2605; Pub.L. 98-353, Title III, § 473, July 10, 1984, 98 Stat. 381; Pub.L. 99-554, Title II, § 216, Oct. 27, 1986, 100 Stat. 3100.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. If the office of trustee becomes vacant during the case, this section makes provision for the selection of a successor trustee. The office might become vacant through death, resignation, removal,

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

failure to qualify under section 322 by posting bond, or the reopening of a case. If it does, creditors may elect a successor in the same manner as they may elect a trustee under the previous section. Pending the election of a

successor, the court may appoint an interim trustee in the usual manner if necessary to preserve or prevent loss to the estate. If creditors do not elect a successor, or if a trustee is needed in a reopened case, then the court appoints a disinterested member of the panel of private trustees to serve.

1986 Amendment. Subsec. (b). Pub.L. 99-554, § 216, substituted “the United States trustee may appoint” for “the court may appoint” and “manner specified in section 701(a)” for “manner and subject to the provisions of section 701 of this title”.

Subsec. (c). Pub.L. 99-554, § 216, substituted “this section or” for “this section, or”, “then the United States trustee” for “then the court”, designated part of existing provisions as par. (1), and, as so designated, substituted “586(a)(1)” for “604(f)”, “in the case; or” for “in the case.”, and added par. (2).

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11, Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 216, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 216, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 216, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 216, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a Unit-

ed States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Effect of vacancy in office of trustee, see section 325.

Qualification of trustee, see section 322.

Library References:

C.J.S. Bankruptcy §§ 194-196.

West's Key No. Digests, Bankruptcy ☞ 3001-3007.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 704. Duties of trustee

The trustee shall—

(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;

(2) be accountable for all property received;

(3) ensure that the debtor shall perform his intention as specified in section 521(2)(B) of this title;

(4) investigate the financial affairs of the debtor;

(5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;

(6) if advisable, oppose the discharge of the debtor;

(7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;

(8) if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires; and

(9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2605; Pub.L. 98-353, Title III, §§ 311(a), 474, July 10, 1984, 98 Stat. 355, 381; Pub.L. 99-554, Title II, § 217, Oct. 27, 1986, 100 Stat. 3100.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. The essential duties of the trustee are enumerated in this section. Others, or elaborations on these, may be prescribed by the Rules of Bankruptcy Procedure to the extent not inconsistent with those prescribed by this section. The duties are derived from section 47a of the Bankruptcy Act [former section 75(a) of this title].

The trustee's principal duty is to collect and reduce to money the property of the estate for which he serves, and to close up the estate as expeditiously as is compatible with the best interests of parties in interest. He must be accountable for all property received, and must investigate the financial affairs of the debtor. If a purpose would be served (such as if there are assets that will be distributed), the trustee is required to examine proofs of claims and object to the allowance of any claim that is improper. If advisable, the trustee must oppose the discharge of the debtor, which is for the benefit of general unsecured creditors whom the trustee represents.

The trustee is responsible to furnish such information concerning the estate and its administration as is requested by a party in interest. If the business of the debtor is authorized to be operated, then the trustee is required to file with governmental units charged with the responsibility for collection or determination of any tax arising out of the operation of the business periodic reports and summaries of the operation, including a statement of receipts and disbursements, and such other information as the court requires. He is required to give constructive notice of the commencement of the case in the manner specified under section 342(b).

Legislative Statements. Section 704(8) of the Senate amendment is deleted in the House amendment. Trustees should give constructive notice of the commencement of the case in the manner specified under section 549(c) of title 11.

1986 Amendment. Par. (8). Pub.L. 99-554, § 217(1), substituted "with the court, with the United States trustee, and with" for "with the court and with" and "information as the United States trustee or the court" for "information as the court".

* Par. (9). Pub.L. 99-554, § 217(2), substituted "with the court and with the United States trustee." for "with the court".

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 217, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 217, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 217, not to become effective in or with respect to judicial

districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L.

99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 217, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Duties of trustee in

Chapter 11 cases, see section 1106.

Chapter 13 cases, see section 1302.

Filing of reports and summaries by debtor engaged in business, see section 1304.

Library References:

C.J.S. Bankruptcy § 197.

West's Key No. Digests, Bankruptcy ⇨3008.1, 3009.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 705. Creditors' committee

(a) At the meeting under section 341(a) of this title, creditors that may vote for a trustee under section 702(a) of this title may elect a committee of not fewer than three, and not more than eleven, creditors, each of whom holds an allowable unsecured claim of a kind entitled to distribution under section 726(a)(2) of this title.

(b) A committee elected under subsection (a) of this section may consult with the trustee or the United States trustee in connection with the administration of the estate, make recommendations to the trustee or the United States trustee

respecting the performance of the trustee's duties, and submit to the court or the United States trustee any question affecting the administration of the estate.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2605; Pub.L. 99-554, Title II, § 218, Oct. 27, 1986, 100 Stat. 3100.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section is derived from section 44b of the Bankruptcy Act [former section 72(b) of this title] without substantial change. It permits election by general unsecured creditors of a committee of not fewer than 3 members and not more than 11 members to consult with the trustee in connection with the administration of the estate, to make recommendations to the trustee respecting the performance of his duties, and to submit to the court any question affecting the administration of the estate. There is no provision for compensation or reimbursement of its counsel.

Legislative Statements. Section 705(a) of the House amendment adopts a provision contained in the Senate amendment that limits a committee of creditors to not more than 11; the House bill contained no maximum limitation.

1986 Amendment. Subsec. (b). Pub.L. 99-554, § 218, substituted "with the trustee or the United States trustee in connection" for "with the trustee in connection", "to the trustee or the United States trustee respecting" for "to the trustee respecting", and "to the court or the United States trustee any question" for "to the court any question".

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provid-

ed for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 218, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 218, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 218, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district

becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 218, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Cross References

Appointment of creditors' and equity security holders' committees in Chapter 11 cases, see section 1102.

Powers and duties of committees in chapter 11 cases, see section 1103.

Library References:

C.J.S. Bankruptcy §§ 193, 373.

West's Key No. Digests, Bankruptcy Ⓒ3024.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 706. Conversion

(a) The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable.

(b) On request of a party in interest and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 11 of this title at any time.

(c) The court may not convert a case under this chapter to a case under chapter 12 or 13 of this title unless the debtor requests such conversion.

(d) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2606; Pub.L. 99-554, Title II, § 257(q), Oct. 27, 1986, 100 Stat. 3115; Pub.L. 103-394, Title V, § 501(d)(22), October 22, 1994, 108 Stat. 4146.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) of this section gives the debtor the one-time absolute right of conversion of a liquidation case to a reorganization or individual repayment plan case. If the case has already once been converted from chapter 11 or 13 to chapter 7, then the debtor does not have that right. The policy of the provision is that the debtor should always be given the opportunity to repay his debts, and a waiver of the right to convert a case is unenforceable.

Subsection (b) permits the court, on request of a party in interest and after notice and a hearing, to convert the case to chapter 11 at any time. The decision whether to convert is left in the sound discretion of the court, based on what will most inure to the benefit of all parties in interest.

Subsection (c) is part of the prohibition against involuntary chapter 13 cases, and prohibits the court from converting a case to chapter 13 without the debtor's consent.

Subsection (d) reinforces section 109 by prohibiting conversion to a chapter unless the debtor is eligible to be a debtor under that chapter.

Legislative Statements. Section 706(a) of the House amendment adopts a provision contained in the Senate amendment indicating that a waiver of the right to convert a case

under section 706(a) is unenforceable. The explicit reference in title 11 forbidding the waiver of certain rights is not intended to imply that other rights, such as the right to file a voluntary bankruptcy case under section 301, may be waived.

Section 706 of the House amendment adopts a similar provision contained in H.R. 8200 as passed by the House. Competing proposals contained in section 706(c) and section 706(d) of the Senate amendment are rejected.

Effective Date of 1994 Amendments.

Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(q), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Cross References

Conversion or dismissal of

Chapter 11 cases, see section 1112.

Chapter 13 cases, see section 1307.

Effect of conversion, see section 348.

Termination of debtor's taxable period, see section 1146.

Library References:

C.J.S. Bankruptcy § 42.

West's Key No. Digests, Bankruptcy ☞2331, 2332.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 707. Dismissal

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including---

(1) unreasonable delay by the debtor that is prejudicial to creditors;

(2) nonpayment of any fees or charges required under chapter 123 of title 28; and

(3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521, but only on a motion by the United States trustee.

(b) After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, but not at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter. There shall be a presumption in favor of granting the relief requested by the debtor. In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2606; Pub.L. 98-353, Title III, §§ 312, 475, July 10, 1984, 98 Stat. 355, 381; Pub.L. 99-554, Title II, § 219, Oct. 27, 1986, 100 Stat. 3100; Pub.L. 105-183, § 4, June 19, 1998, 112 Stat. 517.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section authorizes the court to dismiss a liquidation case only for cause, such as unreasonable delay by the debtor that is prejudicial to creditors or nonpayment of any fees and charges required under chapter 123 of title 28 [section 1911 et seq. of Title 28, Judiciary and Judicial Procedure]. These causes are not exhaustive, but merely illustrative. The section does not contemplate, however, that the ability of the debtor to repay his debts in whole or in part constitutes adequate cause for dismissal. To permit dismissal on that ground would be to enact a non-uniform mandatory chapter 13, in lieu of the remedy of bankruptcy.

Legislative Statements. Section 707 of the House amendment indicates that the court may dismiss a case only after notice and a hearing.

References in Text. Chapter 123 of title 28, referred to in par. (2), is classified to section 1911 et seq. of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1998 Amendments. Pub.L. 105-183, § 5, 112 Stat. 518-19, provides, "This Act and the amendments made by this Act shall apply to any case brought under an applicable provision of title 11, United

States Code, that is pending or commenced on or after the date of enactment of this Act [June 19, 1998]."

1986 Amendment. Subsec. (a)(3). Pub.L. 99-554, § 219(a), added par. (3).

Subsec. (b). Pub.L. 99-554, § 219(b), substituted "motion or on a motion by the United States trustee, but not" for "motion and not".

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provid-

ed for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 219, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 219, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 219, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs

first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 219, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Rules Promulgated by Supreme Court.

United States Supreme Court to prescribe general rules implementing the practice and procedure to be followed under subsec. (b) of this section, with section 2075 of Title 28, Judiciary and Judicial Procedure, to apply with respect to such general rules, see section 320 of Pub.L. 98-353, set out as a note under section 2075 of Title 28, Judiciary and Judicial Procedure.

Cross References

Conversion or dismissal of
Chapter 11 cases, see section 1112.
Chapter 13 cases, see section 1307.
Dismissal of chapter 9 cases, see section 927.
Effect of dismissal, see section 349.

Library References:

C.J.S. Bankruptcy §§ 54, 61–63.
West's Key No. Digests, Bankruptcy Ⓒ2184, 2253, 2254, 2259.1–2264(3), 2295.1.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

SUBCHAPTER II—COLLECTION, LIQUIDATION, AND DISTRIBUTION OF THE ESTATE

§ 721. Authorization to operate business

The court may authorize the trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate.

Pub.L. 95–598, Nov. 6, 1978, 92 Stat. 2606.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95–989. This section is derived from section 2a(5) of the Bankruptcy Act [former section 11(a)(5) of this title]. It permits the court to authorize the operation of any business of the debtor for a limited period, if the operation is in the best interest of the

estate and consistent with orderly liquidation of the estate. An example is the operation of a watch company to convert watch movements and cases into completed watches which will bring much higher prices than the component parts would have brought.

Cross References

Authorization to operate business in chapter 11 cases, see section 1108.
Debtor engaged in business in chapter 13 cases, see section 1304.
Executory contracts and unexpired leases, see section 365.
Executory contracts in stockbroker liquidation cases, see section 744.
Obtaining credit, see section 364.
Retention or replacement of professional persons, see section 327.
Treatment of accounts in
Stockbroker liquidation cases, see section 745.
Commodity broker liquidation cases, see section 763.
Use, sale or lease of property, see section 363.
Utility service, see section 366.

Library References:

C.J.S. Bankruptcy § 199.
West's Key No. Digests, Bankruptcy Ⓒ3025.1.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 722. Redemption

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2606.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section is new and is broader than rights of redemption under the Uniform Commercial Code. It authorizes an individual debtor to redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a nonpurchase money dischargeable consumer debt. It applies only if the debtor's interest in the property is exempt or has been abandoned.

This right to redeem is a very substantial change from current law. To prevent abuses such as may occur when the debtor deliberately allows the property to depreciate in value, the debtor will be required to pay the fair market value of the goods or the amount of the claim if the claim is less. The right is personal to the debtor and not assignable.

Notes of Committee on the Judiciary, House Report No. 95-595. The right to redeem extends to the whole of the property,

not just the debtor's exempt interest in it. Thus, for example, if a debtor owned a \$2,000 car, subject to a \$1,200 lien, the debtor could exempt his \$800 interest in the car. The debtor is permitted a \$1,500 exemption in a car, proposed 11 U.S.C. 522(d)(2). This section permits him to pay the holder of the lien \$1,200 and redeem the entire car, not just the remaining \$700 of his exemption. The redemption is accomplished by paying the holder of the lien the amount of the allowed claim secured by the lien. The provision amounts to a right of first refusal for the debtor in consumer goods that might otherwise be repossessed. The right of redemption under this section is not waivable.

Legislative Statements. Section 722 of the House amendment adopts the position taken in H.R. 8200 as passed by the House and rejects the alternative contained in section 722 of the Senate amendment.

Cross References

Effect of discharge on certain agreements providing for redemption, see section 524.

Library References:

C.J.S. Bankruptcy §§ 111, 112.

West's Key No. Digests, Bankruptcy ☞3034.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 723. Rights of partnership trustee against general partners

(a) If there is a deficiency of property of the estate to pay in full all claims which are allowed in a case under this chapter concerning a partnership and with respect to which a general partner of the partnership is personally liable, the trustee shall have a claim against such general partner to the extent that under applicable nonbankruptcy law such general partner is personally liable for such deficiency.

(b) To the extent practicable, the trustee shall first seek recovery of such deficiency from any general partner in such partnership that is not a debtor in a case under this title. Pending determination of such deficiency, the court may order any such partner to provide the estate with indemnity for, or assurance of payment of, any deficiency recoverable from such partner, or not to dispose of property.

(c) Notwithstanding section 728(c) of this title, the trustee has a claim against the estate of each general partner in such partnership that is a debtor in a case under this title for the full amount of all claims of creditors allowed in the case concerning such partnership. Notwithstanding section 502 of this title, there shall not be allowed in such partner's case a claim against such partner on which both such partner and such partnership are liable, except to any extent that such claim is secured only by property of such partner and not by property of such partnership. The claim of the trustee under this subsection is entitled to distribution in such partner's case under section 726(a) of this title the same as any other claim of a kind specified in such section.

(d) If the aggregate that the trustee recovers from the estates of general partners under subsection (c) of this section is greater than any deficiency not recovered under subsection (b) of this section, the court, after notice and a hearing, shall determine an equitable distribution of the surplus so recovered, and the trustee shall distribute such surplus to the estates of the general partners in such partnership according to such determination.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2606; Pub.L. 98-353, Title III, § 476, July 10, 1984, 98 Stat. 381; Pub.L. 103-394, Title II, § 212, October 22, 1994, 108 Stat. 4125.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section is a significant departure from present law. It repeals the jingle rule, which, for ease of administration, denied partnership creditors their rights against general partners by permitting general partners' individual creditors to share in their estates first to the exclusion of partnership creditors. The result under this section more closely tracks generally applicable partnership law, without a significant administrative burden.

Subsection (a) specifies that each general partner in a partnership debtor is liable to the partnership's trustee for any deficiency of partnership property to pay in full all administrative expenses and all claims against the partnership.

Subsection (b) requires the trustee to seek recovery of the deficiency from any general partner that is not a debtor in a bankruptcy case. The court is empowered to order that partner to indemnify the estate or not to dispose of property pending a determination of

the deficiency. The language of the subsection is directed to cases under the bankruptcy code [this title]. However, if, during the early stages of the transition period, a partner in a partnership is proceeding under the Bankruptcy Act [former Title 11] while the partnership is proceeding under the bankruptcy code [this title], the trustee should not first seek recovery against the Bankruptcy Act partner. Rather, the Bankruptcy Act partner should be deemed for the purposes of this section and the rights of the trustee to be proceeding under title 11.

Subsection (c) requires the partnership trustee to seek recovery of the full amount of the deficiency from the estate of each general partner that is a debtor in a bankruptcy case. The trustee will share equally with the partners' individual creditors in the assets of the partners' estates. Claims of partnership creditors who may have filed against the partner will be disallowed to avoid double counting.

Subsection (d) provides for the case where the total recovery from all of the bankrupt general partners is greater than the deficiency

of which the trustee sought recovery. This case would most likely occur for a partnership with a large number of general partners. If the situation arises, the court is required to determine an equitable redistribution of the surplus to the estate of the general partners. The determination will be based on factors such as the relative liability of each of the general partners under the partnership agreement and the relative rights of each of the general partners in the profits of the enterprise under the partnership agreement.

Legislative Statements. Section 723(c) of the House amendment is a compromise between similar provisions contained in the House bill and Senate amendment. The section makes clear that the trustee of a partnership has a claim against each general partner for the full amount of all claims of creditors allowed in the case concerning the partnership. By restricting the trustee's rights to claims of "creditors," the trustee of the partnership will not have a claim against the general partners for administrative expenses or claims allowed in the case concerning the partnership. As under present law, sections of the Bankruptcy Act applying to codebtors and sureties apply to the relationship of a partner with respect to a

partnership debtor. See sections 501(b), 502(e), 506(d)(2), 509, 524(d), and 1301 of title 11.

1994 Act. The amendment clarifies that a partner of a registered limited liability partnership will only be liable in bankruptcy to the extent a partner would be personally liable for a deficiency according to the registered limited liability statute under which the partnership was formed.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Property of estate, see section 541.

Library References:

C.J.S. Bankruptcy §§ 118, 119.

West's Key No. Digests, Bankruptcy Ⓒ2559.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 724. Treatment of certain liens

(a) The trustee may avoid a lien that secures a claim of a kind specified in section 726(a)(4) of this title.

(b) Property in which the estate has an interest and that is subject to a lien that is not avoidable under this title and that secures an allowed claim for a tax, or proceeds of such property, shall be distributed—

(1) first, to any holder of an allowed claim secured by a lien on such property that is not avoidable under this title and that is senior to such tax lien;

(2) second, to any holder of a claim of a kind specified in section 507(a)(1), 507(a)(2), 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, to the extent of the amount of such allowed tax claim that is secured by such tax lien;

(3) third, to the holder of such tax lien, to any extent that such holder's allowed tax claim that is secured by such tax lien exceeds any amount distributed under paragraph (2) of this subsection;

(4) fourth, to any holder of an allowed claim secured by a lien on such property that is not avoidable under this title and that is junior to such tax lien;

(5) fifth, to the holder of such tax lien, to the extent that such holder's allowed claim secured by such tax lien is not paid under paragraph (3) of this subsection; and

(6) sixth, to the estate.

(c) If more than one holder of a claim is entitled to distribution under a particular paragraph of subsection (b) of this section, distribution to such holders under such paragraph shall be in the same order as distribution to such holders would have been other than under this section.

(d) A statutory lien the priority of which is determined in the same manner as the priority of a tax lien under section 6323 of the Internal Revenue Code of 1986 shall be treated under subsection (b) of this section the same as if such lien were a tax lien.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2607; Pub.L. 98-353, Title III, § 477, July 10, 1984, 98 Stat. 381; Pub.L. 99-554, Title II, § 283(r), Oct. 27, 1986, 100 Stat. 3118; Pub.L. 103-394, Title III, § 304(h), Title V, § 501(d), October 22, 1994, 108 Stat. 4134, 4146.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) of section 724 permits the trustee to avoid a lien that secures a fine, penalty, forfeiture, or multiple, punitive, or exemplary damages claim to the extent that the claim is not compensation for actual pecuniary loss. The subsection follows the policy found in section 57j of the Bankruptcy Act [former section 93(j) of this title] of protecting unsecured creditors from the debtor's wrongdoing, but expands the protection afforded. The lien is made voidable rather than void in chapter 7, in order to permit the lien to be revived if the case is converted to chapter 11 under which penalty liens are not voidable. To make the lien void would be to permit the filing of a chapter 7, the voiding of the lien, and the conversion to a chapter 11, simply to avoid a penalty lien, which should be valid in a reorganization case.

Subsection (b) governs tax liens. This provision retains the rule of present bankruptcy law (§ 67(c)(3) of the Bankruptcy Act [former section 107(c)(3) of this title]) that a tax lien on personal property, if not avoidable by the trustee, is subordinated in payment to unsecured claims having a higher priority than

unsecured tax claims. Those other claims may be satisfied from the amount that would otherwise have been applied to the tax lien, and any excess of the amount of the lien is then applied to the tax. Any personal property (or sale proceeds) remaining is to be used to satisfy claims secured by liens which are junior to the tax lien. Any proceeds remaining are next applied to pay any unpaid balance of the tax lien.

Subsection (d) specifies that any statutory lien whose priority is determined in the same manner as a tax lien is to be treated as a tax lien under this section, even if the lien does not secure a claim for taxes. An example is the ERISA lien.

Notes of Committee on the Judiciary, House Report No. 95-595. Subsection (b) governs tax liens. It is derived from section 67(c)(3) of the Bankruptcy Act [former section 107(c)(3) of this title], without substantial modification in result. It subordinates tax liens to administrative expense and wage claims, and solves certain circuitry of liens problems that arise in connection with the subordination. The order of distribution of property

subject to a tax lien is as follows: First, to holders of liens senior to the tax lien; second, to administrative expenses, wage claims, and consumer creditors that are granted priority, but only to the extent of the amount of the allowed tax claim secured by the lien. In other words, the priority claimants step into the shoes of the tax collector. Third, to the tax claimant, to the extent that priority claimants did not use up his entire claim. Fourth, to junior lien holders. Fifth, to the tax collector to the extent that he was not paid under paragraph (3). Finally, any remaining property goes to the estate. The result of these provisions are to leave senior and junior lienors and holders of unsecured claims undisturbed. If there are any liens that are equal in status to the tax lien, they share *pari passu* with the tax lien under the distribution provisions of this subsection.

Legislative Statements. Section 724 of the House amendment adopts the provision taken in the House bill and rejects the provision taken in the Senate amendment. In effect, a tax claim secured by a lien is treated as a claim between the fifth and sixth priority in a case under chapter 7 rather than as a secured claim.

The House amendment modifies present law by requiring the subordination of tax liens on both real and personal property to the payment of claims having a priority. This means that assets are to be distributed from the debtor's estate to pay higher priority claims before

the tax claims are paid, even though the tax claims are properly secured. Under present law and the Senate amendment only tax liens on personal property, but not on real property, are subordinated to the payment of claims having a priority above the priority for tax claims.

References in Text. Section 6323 of the Internal Revenue Code of 1954, referred to in subsec. (d), is classified to section 6323 of Title 26, Internal Revenue Code.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1986 Amendments; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Automatic preservation of avoided transfer, see section 551.

Commencement of involuntary cases by transferees of voidable transfers, see section 303.

Disallowance of claims of entity that is transferee of avoidable transfer, see section 502.

Effect of dismissal, see section 349.

Exemptions, see section 522.

Liability of transferee of avoided transfer, see section 550.

Voidable transfers in

Commodity broker liquidation cases, see section 764.

Stockholder liquidation cases, see section 749.

Library References:

C.J.S. Bankruptcy §§ 123, 134, 215, 351-353.

West's Key No. Digests, Bankruptcy ⇨2701, 3078(2), 3442.1, 3443.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 725. Disposition of certain property

After the commencement of a case under this chapter, but before final distribution of property of the estate under section 726 of this title, the trustee,

after notice and a hearing, shall dispose of any property in which an entity other than the estate has an interest, such as a lien, and that has not been disposed of under another section of this title.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2607; Pub.L. 98-353, Title III, § 478, July 10, 1984, 98 Stat. 381.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section requires the court to determine the appropriate disposition of property in which the estate and an entity other than the estate have an interest. It would apply, for example, to property subject to a lien or property co-owned by the estate and another entity. The court must make the determination with respect to property that is not disposed of under another section of the bankruptcy code, such as by abandonment under section 554, by sale or distribution under 363, or by allowing foreclosure by a secured creditor by lifting the stay under section 362. The purpose of the section is to give the court appropriate authority to ensure that collateral or its proceeds is returned to the proper secured creditor, that consigned or bailed goods are returned to the consignor or bailor and so on. Current law is curiously silent on this point, though case law has grown to fill the void. The section is in lieu of a section that would direct a certain distribution to secured creditors. It gives the

court greater flexibility to meet the circumstances, and it is broader, permitting disposition of property subject to a co-ownership interest.

Legislative Statements. Section 725 of the House amendment adopts the substance contained in both the House bill and Senate amendment but transfers an administrative function to the trustee in accordance with the general thrust of this legislation to separate the administrative and the judicial functions where appropriate.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy §§ 355, 356.

West's Key No. Digests, Bankruptcy ☞3441.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 726. Distribution of property of the estate

(a) Except as provided in section 510 of this title, property of the estate shall be distributed—

(1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed before the date on which the trustee commences distribution under this section;

(2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is—

- (A) timely filed under section 501(a) of this title;
- (B) timely filed under section 501(b) or 501(c) of this title; or
- (C) tardily filed under section 501(a) of this title, if—

(i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501(a) of this title; and

(ii) proof of such claim is filed in time to permit payment of such claim;

(3) third, in payment of any allowed unsecured claim proof of which is tardily filed under section 501(a) of this title, other than a claim of the kind specified in paragraph (2)(C) of this subsection;

(4) fourth, in payment of any allowed claim, whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of a trustee, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim;

(5) fifth, in payment of interest at the legal rate from the date of the filing of the petition, on any claim paid under paragraph (1), (2), (3), or (4) of this subsection; and

(6) sixth, to the debtor.

(b) Payment on claims of a kind specified in paragraph (1), (2), (3), (4), (5), (6), (7), or (8) of section 507(a) of this title, or in paragraph (2), (3), (4), or (5) of subsection (a) of this section, shall be made pro rata among claims of the kind specified in each such particular paragraph, except that in a case that has been converted to this chapter under section 1009,¹ 1112, 1208, or 1307 of this title, a claim allowed under section 503(b) of this title incurred under this chapter after such conversion has priority over a claim allowed under section 503(b) of this title incurred under any other chapter of this title or under this chapter before such conversion and over any expenses of a custodian superseded under section 543 of this title.

(c) Notwithstanding subsections (a) and (b) of this section, if there is property of the kind specified in section 541(a)(2) of this title, or proceeds of such property, in the estate, such property or proceeds shall be segregated from other property of the estate, and such property or proceeds and other property of the estate shall be distributed as follows:

(1) Claims allowed under section 503 of this title shall be paid either from property of the kind specified in section 541(a)(2) of this title, or from other property of the estate, as the interest of justice requires.

(2) Allowed claims, other than claims allowed under section 503 of this title, shall be paid in the order specified in subsection (a) of this section, and, with respect to claims of a kind specified in a particular paragraph of section 507 of this title or subsection (a) of this section, in the following order and manner:

(A) First, community claims against the debtor or the debtor's spouse shall be paid from property of the kind specified in section 541(a)(2) of this title, except to the extent that such property is solely liable for debts of the debtor.

(B) Second, to the extent that community claims against the debtor are not paid under subparagraph (A) of this paragraph, such community

claims shall be paid from property of the kind specified in section 541(a)(2) of this title that is solely liable for debts of the debtor.

(C) Third, to the extent that all claims against the debtor including community claims against the debtor are not paid under subparagraph (A) or (B) of this paragraph such claims shall be paid from property of the estate other than property of the kind specified in section 541(a)(2) of this title.

(D) Fourth, to the extent that community claims against the debtor or the debtor's spouse are not paid under subparagraph (A), (B), or (C) of this paragraph, such claims shall be paid from all remaining property of the estate.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2608; Pub.L. 98-353, Title III, § 479, July 10, 1984, 98 Stat. 381; Pub.L. 99-554, Title II, §§ 257(r), 283(s), Oct. 27, 1986, 100 Stat. 3115, 3118; Pub.L. 103-394, Title II, § 213(b), Title III, § 304(h), Title V, § 501(d)(24), October 22, 1994, 108 Stat. 4126, 4134, 4146.

1. So in original.

Historical and Revision Notes

Notes of Committee of the Judiciary, Senate Report No. 95-989. This section is the general distribution section for liquidation cases. It dictates the order in which distribution of property of the estate, which has usually been reduced to money by the trustee under the requirements of section 704(1).

First, property is distributed among priority claimants, as determined by section 507, and in the order prescribed by section 507. Second, distribution is to general unsecured creditors. This class excludes priority creditors and the two classes of subordinated creditors specified below. The provision is written to permit distribution to creditors that tardily file claims if their tardiness was due to lack of notice or knowledge of the case. Though it is in the interest of the estate to encourage timely filing, when tardy filing is not the result of a failure to act by the creditor, the normal subordination penalty should not apply. Third distribution is to general unsecured creditors who tardily file. Fourth distribution is to holders of fine, penalty, forfeiture, or multiple, punitive, or exemplary damage claims. More of these claims are disallowed entirely under present law. They are simply subordinated here.

Paragraph (4) provides that punitive penalties, including prepetition tax penalties, are subordinated to the payment of all other classes of claims, except claims for interest accruing during the case. In effect, these penalties are payable out of the estate's assets only

if and to the extent that a surplus of assets would otherwise remain at the close of the case for distribution back to the debtor.

Paragraph (5) provides that postpetition interest on prepetition claims is also to be paid to the creditor in a subordinated position. Like prepetition penalties, such interest will be paid from the estate only if and to the extent that a surplus of assets would otherwise remain for return to the debtor at the close of the case.

This section also specifies that interest accrued on all claims (including priority and nonpriority tax claims) which accrued before the date of the filing of the title 11 petition is to be paid in the same order of distribution of the estate's assets as the principal amount of the related claims.

Any surplus is paid to the debtor under paragraph (6).

Subsection (b) follows current law. It specifies that claims within a particular class are to be paid pro rata. This provision will apply, of course, only when there are inadequate funds to pay the holders of claims of a particular class in full. The exception found in the section, which also follows current law, specifies that liquidation administrative expenses are to be paid ahead of reorganization administrative expenses if the case has been converted from a reorganization case to a liquidation case, or from an individual repayment plan case to a liquidation case.

Subsection (c) governs distributions in cases in which there is community property and other property of the estate. The section requires the two kinds of property to be segregated. The distribution is as follows: First, administrative expenses are to be paid, as the court determines on any reasonable equitable basis, from both kinds of property. The court will divide administrative expenses according to such factors as the amount of each kind of property in the estate, the cost of preservation and liquidation of each kind of property, and whether any particular administrative expenses are attributable to one kind of property or the other. Second, claims are to be paid as provided under subsection (a) (the normal liquidation case distribution rules) in the following order and manner: First, community claims against the debtor or the debtor's spouse are paid from community property, except such as is liable solely for the debts of the debtor.

Second, community claims against the debtor, to the extent not paid under the first provision, are paid from community property that is solely liable for the debts of the debtor. Third, community claims, to the extent they remain unpaid, and all other claims against the debtor, are paid from noncommunity property. Fourth, if any community claims against the debtor or the debtor's spouse remain unpaid, they are paid from whatever property remains in the estate. This would occur if community claims against the debtor's spouse are large in amount and most of the estate's property is property solely liable, under nonbankruptcy law, for debts of the debtor.

The marshalling rules in this section apply only to property of the estate. However, they will provide a guide to the courts in the interpretation of proposed 11 U.S.C. 725, relating to distribution of collateral, in cases in which there is community property. If a secured creditor has a lien on both community and noncommunity property, the marshalling rules here—by analogy would dictate that the credi-

tor be satisfied first out of community property, and then out of separate property.

Legislative Statements. Section 726(a)(4) adopts a provision contained in the Senate amendment subordinating prepetition penalties and penalties arising in the involuntary gap period to the extent the penalties are not compensation for actual pecuniary laws.

The House amendment deletes a provision following section 726(a)(6) of the Senate amendment providing that the term "claim" includes interest due owed before the date of the filing of the petition as unnecessary since a right to payment for interest due is a right to payment which is within the definition of "claim" in section 101(4) of the House amendment.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(r), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Customer property, distribution in

Commodity broker liquidation cases, see section 766.

Stockbroker liquidation cases, see section 752.

Distribution in chapter 11 cases, see section 1143.

Distribution of securities in stockbroker liquidation cases, see section 750.

Election of creditors holding certain claims entitled to distribution to creditors' committee, see section 705.

Election of trustee by creditors holding claims entitled to distribution, see section 702.

Payment stopped on checks remaining unpaid 90 days after final distribution, see section 347.

Library References:

C.J.S. Bankruptcy §§ 351 et seq.
West's Key No. Digests, Bankruptcy ☞3441-3445.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 727. Discharge

(a) The court shall grant the debtor a discharge, unless—

(1) the debtor is not an individual;

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

(3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;

(4) the debtor knowingly and fraudulently, in or in connection with the case—

(A) made a false oath or account;

(B) presented or used a false claim;

(C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or

(D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs;

(5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities;

(6) the debtor has refused, in the case—

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

(B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or

(C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify;

(7) the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider;

(8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition;

(9) the debtor has been granted a discharge under section 1228 or 1328 of this title, or under section 660 or 661 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least—

(A) 100 percent of the allowed unsecured claims in such case; or

(B)(i) 70 percent of such claims; and

(ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort; or

(10) the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter.

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

(c)(1) The trustee, a creditor, or the United States trustee may object to the granting of a discharge under subsection (a) of this section.

(2) On request of a party in interest, the court may order the trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge.

(d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—

(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee; or

(3) the debtor committed an act specified in subsection (a)(6) of this section.

(e) The trustee, a creditor, or the United States trustee may request a revocation of a discharge—

(1) under subsection (d)(1) of this section within one year after such discharge is granted; or

(2) under subsection (d)(2) or (d)(3) of this section before the later of—

(A) one year after the granting of such discharge; and

(B) the date the case is closed.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2609; Pub.L. 98-353, Title III, § 480, July 10, 1984, 98 Stat. 382; Pub.L. 99-554, Title II, §§ 220, 257(s), Oct. 27, 1986, 100 Stat. 3101, 3116.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section is the heart of the fresh start provisions of the bankruptcy law. Subsection (a) requires the court to grant a debtor a discharge unless one of nine conditions is met. The first condition is that the debtor is not an individual. This is a change from present law, under which corporations and partnerships may be discharged in liquidation cases, though they rarely are. The change in policy will avoid trafficking in corporate shells and in bankrupt partnerships. “Individual” includes a deceased individual, so that if the debtor dies during the bankruptcy case, he will nevertheless be released from his debts, and his estate will not be liable for them. Creditors will be entitled to only one satisfaction—from the bankruptcy estate and not from the probate estate.

The next three grounds for denial of discharge center on the debtor’s wrongdoing in or in connection with the bankruptcy case. They are derived from Bankruptcy Act § 14c [former section 32(c) of this title]. If the debtor, with intent to hinder, delay, or defraud his creditors or an officer of the estate, has transferred, removed, destroyed, mutilated, or concealed, or has permitted any such action with respect to, property of the debtor within the year preceding the case, or property of the estate after the commencement of the case, then the debtor is denied discharge. The debtor is also denied discharge if he has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any books and records from which his financial condition might be ascertained, unless the act or failure to act was justified under all the circumstances of the case. The fourth ground for denial of discharge is the commission of a bankruptcy crime, although the standard of proof is preponderance of the evidence rather than proof beyond a reasonable doubt. These crimes include the making of a false oath or account, the use or presentation of a false claim, the giving or receiving of money for acting or forbearing to act, and the withhold-

ing from an officer of the estate entitled to possession of books and records relating to the debtor’s financial affairs.

The fifth ground for denial of discharge is the failure of the debtor to explain satisfactorily any loss of assets or deficiency of assets to meet the debtor’s liabilities. The sixth ground concerns refusal to testify. It is a change from present law, under which the debtor may be denied discharge for legitimately exercising his right against self-incrimination. Under this provision, the debtor may be denied discharge if he refuses to obey any lawful order of the court, or if he refuses to testify after having been granted immunity or after improperly invoking the constitutional privilege against self-incrimination.

The seventh ground for denial of discharge is the commission of an act specified in grounds two through six during the year before the debtor’s case in connection with another bankruptcy case concerning an insider.

The eighth ground for denial of discharge is derived from § 14c(5) of the Bankruptcy Act [former section 32(c)(5) of this title]. If the debtor has been granted a discharge in a case commenced within 6 years preceding the present bankruptcy case, he is denied discharge. This provision, which is no change from current law with respect to straight bankruptcy, is the 6-year bar to discharge. Discharge under chapter 11 will bar a discharge for 6 years. As under current law, confirmation of a composition wage earner plan under chapter 13 is a basis for invoking the 6-year bar.

The ninth ground is approval by the court of a waiver of discharge.

Subsection (b) specifies that the discharge granted under this section discharges the debtor from all debts that arose before the date of the order for relief. It is irrelevant whether or not a proof of claim was filed with respect to the debt, and whether or not the claim based on the debt was allowed.

Subsection (c) permits the trustee, or a creditor, to object to discharge. It also permits the court, on request of a party in interest, to order the trustee to examine the acts and conduct of the debtor to determine whether a ground for denial of discharge exists.

Subsection (d) requires the court to revoke a discharge already granted in certain circumstances. If the debtor obtained the discharge through fraud, if he acquired and concealed property of the estate, or if he refused to obey a court order or to testify, the discharge is to be revoked.

Subsection (e) permits the trustee or a creditor to request revocation of a discharge within 1 year after the discharge is granted, on the grounds of fraud, and within one year of discharge or the date of the closing of the case, whichever is later, on other grounds.

Legislative Statements. Sections 727(a)(8) and (9) of the House amendment represent a compromise between provisions contained in section 727(a)(8) of the House bill and Senate amendment. Section 727(a)(8) of the House amendment adopts section 727(a)(8) of the House bill. However, section 727(a)(9) of the House amendment contains a compromise based on section 727(a)(8) of the Senate amendment with respect to the circumstances under which a plan by way of composition under Chapter XIII of the Bankruptcy Act [former section 1001 et seq. of this title] should be a bar to discharge in a subsequent proceeding under title 11. The paragraph provides that a discharge under section 660 or 661 of the Bankruptcy Act [former sections 1060 and 1061 of this title] or section 1328 of title 11 in a case commenced within 6 years before the date of the filing of the petition in a subsequent case, operates as a bar to discharge unless, first, payments under the plan totaled at least 100 percent of the allowed unsecured claims in the case; or second, payments under the plan totaled at least 70 percent of the allowed unsecured claims in the case and the plan was proposed by the debtor in good faith and was the debtor's best effort.

It is expected that the Rules of Bankruptcy Procedure will contain a provision permitting the debtor to request a determination of whether a plan is the debtor's "best effort" prior to confirmation of a plan in a case under chapter 13 of title 11. In determining whether a plan is the debtor's "best effort" the court will evaluate several factors. Different facts and circumstances in cases under chapter 13 operate to make any rule of thumb of limited

usefulness. The court should balance the debtor's assets, including family income, health insurance, retirement benefits, and other wealth, a sum which is generally determinable, against the foreseeable necessary living expenses of the debtor and the debtor's dependents, which unfortunately is rarely quantifiable. In determining the expenses of the debtor and the debtor's dependents, the court should consider the stability of the debtor's employment, if any, the age of the debtor, the number of the debtor's dependents and their ages, the condition of equipment and tools necessary to the debtor's employment or to the operation of his business, and other foreseeable expenses that the debtor will be required to pay during the period of the plan, other than payments to be made to creditors under the plan.

Section 727(a)(10) of the House amendment clarifies a provision contained in section 727(a)(9) of the House bill and Senate amendment indicating that a discharge may be barred if the court approves a waiver of discharge executed in writing by the debtor after the order for relief under chapter 7.

Section 727(b) of the House amendment adopts a similar provision contained in the Senate amendment modifying the effect of discharge. The provision makes clear that the debtor is discharged from all debts that arose before the date of the order for relief under chapter 7 in addition to any debt which is determined under section 502 as if it were a prepetition claim. Thus, if a case is converted from chapter 11 or chapter 13 to a case under chapter 7, all debts prior to the time of conversion are discharged, in addition to debts determined after the date of conversion of a kind specified in section 502, that are to be determined as prepetition claims. This modification is particularly important with respect to an individual debtor who files a petition under chapter 11 or chapter 13 of title 11 if the case is converted to chapter 7. The logical result of the House amendment is to equate the result that obtains whether the case is converted from another chapter to chapter 7, or whether the other chapter proceeding is dismissed and a new case is commenced by filing a petition under chapter 7.

References in Text. Sections 14, 371, and 476 of the Bankruptcy Act, referred to in subsec. (a)(8), were classified to former sections 32, 771 and 876 of this title, respectively.

Sections 660 and 661 of the Bankruptcy Act, referred to in subsec. (a)(9), were classified to

former sections 1060 and 1061 of this title, respectively.

1986 Amendment. Subsec. (c)(1). Pub.L. 99-554, § 220, substituted "The trustee, a creditor, or the United States trustee may object" for "The trustee or a creditor may object".

Subsec. (d). Pub.L. 99-554, § 220, substituted ", a creditor, or the United States trustee," for "or a creditor,".

Subsec. (d)(2). Pub.L. 99-554, § 220, substituted "acquisition of or entitlement to such property" for "acquisition of, or entitlement to, such property".

Subsec. (e). Pub.L. 99-554, § 220, substituted "The trustee, a creditor, or the United States trustee may" for "The trustee or a creditor may".

Subsec. (e)(1). Pub.L. 99-554, § 220, substituted "section within" for "section, within" and "discharge is granted" for "discharge was granted".

Subsec. (e)(2). Pub.L. 99-554, § 220, substituted "section before" for "section, before", and in subpar. (A) "discharge; and" for "discharge; or".

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Savings Provisions; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(5), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 220 not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 220, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 220, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 2002, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private

trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 220, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-

year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Confirmation of plan as affecting discharge in
Chapter 9 cases, see section 944.
Chapter 11 cases, see section 1141.

Discharge in Chapter 13 cases, see section 1328.

Duty of trustee to oppose discharge, see section 704.

Effect of

Conversion, see section 348.

Discharge, see section 524.

Exceptions to discharge, see section 523.

Library References:

C.J.S. Bankruptcy §§ 291 et seq.

West's Key No. Digests, Bankruptcy ☞ 3271-3322.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 728. Special tax provisions

(a) For the purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor that is an individual shall terminate on the date of the order for relief under this chapter, unless the case was converted under section 1112 or 1208 of this title.

(b) Notwithstanding any State or local law imposing a tax on or measured by income, the trustee shall make tax returns of income for the estate of an individual debtor in a case under this chapter or for a debtor that is a corporation in a case under this chapter only if such estate or corporation has net taxable income for the entire period after the order for relief under this chapter during which the case is pending. If such entity has such income, or if the debtor is a partnership, then the trustee shall make and file a return of income for each taxable period during which the case was pending after the order for relief under this chapter.

(c) If there are pending a case under this chapter concerning a partnership and a case under this chapter concerning a partner in such partnership, a governmental unit's claim for any unpaid liability of such partner for a State or local tax on or measured by income, to the extent that such liability arose from the inclusion in such partner's taxable income of earnings of such partnership that were not withdrawn by such partner, is a claim only against such partnership.

(d) Notwithstanding section 541 of this title, if there are pending a case under this chapter concerning a partnership and a case under this chapter concerning a partner in such partnership, then any State or local tax refund or reduction of tax of such partner that would have otherwise been property of the estate of such partner under section 541 of this title—

(1) is property of the estate of such partnership to the extent that such tax refund or reduction of tax is fairly apportionable to losses sustained by such partnership and not reimbursed by such partner; and

(2) is otherwise property of the estate of such partner.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2611; Pub.L. 98-353, Title III, § 481, July 10, 1984, 98 Stat. 382; Pub.L. 99-554, Title II, § 257(t), Oct. 27, 1986, 100 Stat. 3116.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 728 of title 11 applies only to state and local taxation. This provision contains four subsections which embody special tax provisions that apply in a case under chapter 7. Subsection (a) terminates the taxable year of an individual debtor on the date of the order for relief under chapter 7 of title 11. The date of termination of the individual's taxable year is the date on which the estate first becomes a separate taxable entity. If the case was originally filed under chapter 11 of title 11, then the estate would have been made a separate taxable entity on the date of the order for relief under that chapter. In the rare case of a multiple conversion, then the date of the order for relief under the first chapter under which the estate was a separate taxable entity is controlling.

Subsection (b) permits the trustee of the estate of an individual debtor or a corporation in a case under chapter 7 of title 11 to make a tax return only if the estate or corporation has net taxable income for the entire case. If the estate or corporation has net taxable income at the close of the case, then the trustee files an income tax return for each tax year during which the case was pending. The trustee of a partnership debtor must always file returns for each such taxable period.

Subsection (c) sets forth a marshalling rule pertaining to tax claims against a partner and a partnership in a case under chapter 7 of title 11. To the extent that the income tax liability arose from the inclusion of undistributed earnings in the partner's taxable income, the court is required to disallow the tax claim against the partner's estate and to allow such claim against the partnership estate. No burden is placed on the taxing authority; the taxing authority should file a complete proof of claim in each case and the court will execute the marshalling. If the partnership's assets are insufficient to satisfy partnership creditors in full, then section 723(c) of title 11 will apply, notwithstanding this subsection, to allow any unsatisfied tax claims to be asserted by the partnership trustee against the estate of the partner. The marshalling rule under this subsection applies only for purposes of allowance and distribution. Thus the tax claim may be nondischargeable with respect to an individual partner.

Subsection (d) requires the court to apportion any tax refund or reduction of tax between the estate of a partner and the estate of his partnership. The standard of apportionment entitles the partnership estate to receive that part of the tax refund or reduction that is attributable to losses sustained by the partnership that were deducted by the partner but for

which the partner never reimbursed the partnership. The partner's estate receives any part not allocated to the partnership estate. The section applies notwithstanding section 541 of title 11, which includes the partner's right to a tax refund or to reduction of tax as property of the partner's estate.

Legislative Statements. Section 728 of the House amendment adopts a provision contained in the House bill that was deleted by the Senate amendment.

Liquidations. The House bill contained special tax provisions concerning the treatment of liquidations cases for State and local tax laws. These provisions deal with the taxable years of an individual debtor, return-filing requirements, and rules allocating State and local tax liabilities and refunds between a bankrupt partner and the partnership of which he is a member. The Senate amendment deleted these rules pending consideration of the Federal tax treatment of bankruptcy in the next Congress. The House amendment returns these provisions to the bill in order that they may be studied by the bankruptcy and tax bars who may wish to submit comments to Con-

gress in connection with its consideration of these provisions in the next Congress.

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(t), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Determination of tax liability, see section 505.

Effect of conversion, see section 348.

Special tax provisions

Generally, see section 346.

Chapter 11 cases, see section 1146.

Library References:

C.J.S. Bankruptcy § 120; Taxation §§ 1093, 1102.

West's Key No. Digests, Bankruptcy ⇨2550; Taxation ⇨1017, 1079.1.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

SUBCHAPTER III—STOCKBROKER LIQUIDATION

Cross References

Subchapter applicable only in case under chapter concerning stockholder, see section 103.

§ 741. Definitions for this subchapter

In this subchapter—

(1) "Commission" means Securities and Exchange Commission;

(2) "customer" includes—

(A) entity with whom a person deals as principal or agent and that has a claim against such person on account of a security received, acquired, or held by such person in the ordinary course of such person's

business as a stockbroker, from or for the securities account or accounts of such entity—

- (i) for safekeeping;
- (ii) with a view to sale;
- (iii) to cover a consummated sale;
- (iv) pursuant to a purchase;
- (v) as collateral under a security agreement; or
- (vi) for the purpose of effecting registration of transfer; and

(B) entity that has a claim against a person arising out of—

(i) a sale or conversion of a security received, acquired, or held as specified in subparagraph (A) of this paragraph; or

(ii) a deposit of cash, a security, or other property with such person for the purpose of purchasing or selling a security;

(3) “customer name security” means security—

(A) held for the account of a customer on the date of the filing of the petition by or on behalf of the debtor;

(B) registered in such customer’s name on such date or in the process of being so registered under instructions from the debtor; and

(C) not in a form transferable by delivery on such date;

(4) “customer property” means cash, security, or other property, and proceeds of such cash, security, or property, received, acquired, or held by or for the account of the debtor, from or for the securities account of a customer—

(A) including—

(i) property that was unlawfully converted from and that is the lawful property of the estate;

(ii) a security held as property of the debtor to the extent such security is necessary to meet a net equity claim of a customer based on a security of the same class and series of an issuer;

(iii) resources provided through the use or realization of a customer’s debit cash balance or a debit item includible in the Formula for Determination of Reserve Requirement for Brokers and Dealers as promulgated by the Commission under the Securities Exchange Act of 1934; and

(iv) other property of the debtor that any applicable law, rule, or regulation requires to be set aside or held for the benefit of a customer, unless including such property as customer property would not significantly increase customer property; but

(B) not including—

(i) a customer name security delivered to or reclaimed by a customer under section 751 of this title; or

(ii) property to the extent that a customer does not have a claim against the debtor based on such property;

(5) “margin payment” means payment or deposit of cash, a security, or other property, that is commonly known to the securities trade as original margin, initial margin, maintenance margin, or variation margin, or as a mark-to-market payment, or that secures an obligation of a participant in a securities clearing agency;

(6) “net equity” means, with respect to all accounts of a customer that such customer has in the same capacity—

(A)(i) aggregate dollar balance that would remain in such accounts after the liquidation, by sale or purchase, at the time of the filing of the petition, of all securities positions in all such accounts, except any customer name securities of such customer; minus

(ii) any claim of the debtor against such customer in such capacity that would have been owing immediately after such liquidation; plus

(B) any payment by such customer to the trustee, within 60 days after notice under section 342 of this title, of any business related claim of the debtor against such customer in such capacity;

(7) “securities contract” means contract for the purchase, sale, or loan of a security, including an option for the purchase or sale of a security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any option entered into on a national securities exchange relating to foreign currencies, or the guarantee of any settlement of cash or securities by or to a securities clearing agency;

(8) “settlement payment” means a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, or any other similar payment commonly used in the securities trade; and

(9) “SIPC” means Securities Investor Protection Corporation.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2611; Pub.L. 97-222, § 8, July 27, 1982, 96 Stat. 237; Pub.L. 98-353, Title III, § 482, July 10, 1984, 98 Stat. 382; Pub.L. 103-394, Title V, § 501(d)(27), October 22, 1994, 108 Stat. 4146.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 741 sets forth definitions for subchapter III of chapter 7.

Paragraph (1) defines “Commission” to mean the Securities and Exchange Commission.

Paragraph (2) defines “customer” to include anybody that interacts with the debtor in a capacity that concerns securities transactions. The term embraces cash or margin customers of a broker or dealer in the broadest sense.

Paragraph (3) defines “customer name security” in a restrictive fashion to include only non-transferrable securities that are registered, or in the process of being registered in a

customer’s own name. The securities must not be endorsed by the customer and the stockbroker must not be able to legally transfer the securities by delivery, by a power of attorney, or otherwise.

Paragraph (4) defines “customer property” to include all property of the debtor that has been segregated for customers or property that should have been segregated but was unlawfully converted. Clause (i) refers to customer property not properly segregated by the debtor or customer property converted and then recovered so as to become property of the estate. Unlawfully converted property that has been transferred to a third party is excluded until it is recovered as property of the estate by virtue

of the avoiding powers. The concept excludes customer name securities that have been delivered to or reclaimed by a customer and any property properly belonging to the stockholder, such as money deposited by a customer to pay for securities that the stockholder has distributed to such customer.

Paragraph (5) [now (6)] defines “net equity” to establish the extent to which a customer will be entitled to share in the single and separate fund. Accounts of a customer are aggregated and offset only to the extent the accounts are held by the customer in the same capacity. Thus, a personal account is separate from an account held as trustee. In a community property state an account held for the community is distinct from an account held as separate property.

The net equity is computed by liquidating all securities positions in the accounts and crediting the account with any amount due to the customer. Regardless of the actual dates, if any, of liquidation, the customer is only entitled to the liquidation value at the time of the filing of the petition. To avoid double counting, the liquidation value of customer name securities belonging to a customer is excluded from net equity. Thus, clause (ii) includes claims against a customer resulting from the liquidation of a security under clause (i). The value of a security on which trading has been suspended at the time of the filing of the petition will be estimated. Once the net liquidation value is computed, any amount that the customer owes to the stockbroker is subtracted including any amount that would be owing after the hypothetical liquidation, such as brokerage fees. Debts owed by the customer to the debtor, other than in a securities related transaction, will not reduce the net equity of

the customer. Finally, net equity is increased by any payment by the customer to the debtor actually paid within 60 days after notice. The principal reason a customer would make such a payment is to reclaim customer name securities under § 751.

Paragraph (6) defines “1934 Act” to mean the Securities Exchange Act of 1934 [section 78a et seq. of Title 15, Commerce and Trade].

Paragraph (7) [now (9)] defines “SIPC” to mean the Securities Investor Protection Corporation.

Legislative Statements. Section 741(6) of the House bill and Senate amendment is deleted by the House amendment since the defined term is used only in section 741(4)(A)(iii). A corresponding change is made in that section.

References in Text. The Securities Exchange Act of 1934, referred to in par. (4)(A), is Act June 6, 1934, c. 404, 48 Stat. 881, which is classified to section 78a et seq. of Title 15, Commerce and Trade.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Definitions applicable in

Cases under this title, see section 101.

Chapter 9 cases, see section 902.

Commodity broker liquidation cases, see section 761.

Railroad reorganization cases, see section 1162.

Reorganization cases, see section 1101.

Stockbroker defined, see section 101.

Library References:

C.J.S. Bankruptcy §§ 358-360; Securities Regulation § 6.

West's Key No. Digests, Bankruptcy ⌘3461; Securities Regulation ⌘185.10-185.21.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 742. Effect of section 362 of this title in this subchapter

Notwithstanding section 362 of this title, SIPC may file an application for a protective decree under the Securities Investor Protection Act of 1970. The filing of such application stays all proceedings in the case under this title unless and until such application is dismissed. If SIPC completes the liquidation of the debtor, then the court shall dismiss the case.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2613; Pub.L. 97-222, § 9, July 27, 1982, 96 Stat. 237; Pub.L. 103-394, § 501(d), October 22, 1994, 108 Stat. 4106.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 742 indicates that the automatic stay does not prevent SIPC from filing an application for a protective decree under SIPA. If SIPA does file such an application, then all bankruptcy proceedings are suspended until the SIPC action is completed. If SIPC completes liquidation of the stockbroker then the bankruptcy case is dismissed.

Legislative Statements. Section 742 of the House amendment deletes a sentence contained in the Senate amendment requiring the trustee in an interstate stock-brokerage liquidation to comply with the provisions of subchapter IV of chapter 7 if the debtor is also a commodity broker. The House amendment expands the requirement to require the SIPC trustee to perform such duties, if the debtor is a commodity broker, under section 7(b) of the

Securities Investor Protection Act [section 78ggg(b) of Title 15, Commerce and Trade]. The requirement is deleted from section 742 since the trustee of an intrastate stockbroker will be bound by the provisions of subchapter IV of chapter 7 if the debtor is also a commodity broker by reason of section 103 of title 11.

References in Text. The Securities Investor Protection Act of 1970, referred to in text, is Pub.L. 91-598, Dec. 30, 1970, 84 Stat. 1636, which is classified to section 78aaa et seq. of Title 15, Commerce and Trade.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

Cross References

Automatic stay of enforcement of claims against debtor in chapter 9 cases, see section 922.
Effect of dismissal, see section 349.
Stay of action against codebtor in chapter 13 cases, see section 1301.

Library References:

C.J.S. Bankruptcy §§ 358-360; Securities Regulation § 6.
West's Key No. Digests, Bankruptcy Ⓒ3461; Securities Regulation Ⓒ185.10-185.21.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 743. Notice

The clerk shall give the notice required by section 342 of this title to SIPC and to the Commission.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2613; Pub.L. 103-394, § 501(d), October 22, 1994, 108 Stat. 4106.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 743 requires that notice of the order for relief be given to SIPC and to the SEC in every stockbroker case.

Codification. Pub.L. 99-554, Title II, § 283(t), Oct. 27, 1986, 100 Stat. 3118, provided that this section is amended by striking out “(d)”, which amendment was incapable of execution in view of present language of text.

Effective Date of 1986 Amendments; Quarterly Fees. Amendment by Pub.L. 99-

554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

Cross References

Notice in chapter 9 cases, see section 923.

Notice to the Commodity Futures Trading Commission, see section 762.

Library References:

C.J.S. Bankruptcy §§ 358-360; Securities Regulation § 6.

West’s Key No. Digests, Bankruptcy Ⓒ3461; Securities Regulation 185.10-185.21.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 744. Executory contracts

Notwithstanding section 365(d)(1) of this title, the trustee shall assume or reject, under section 365 of this title, any executory contract of the debtor for the purchase or sale of a security in the ordinary course of the debtor’s business, within a reasonable time after the date of the order for relief, but not to exceed 30 days. If the trustee does not assume such a contract within such time, such contract is rejected.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2613; Pub.L. 97-222, § 10, July 27, 1982, 96 Stat. 238.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 744 instructs the court to give the trustee a reasonable time, not to exceed 30 days, to assume or

reject any executory contract of the stockbroker to buy or sell securities. Any contract not assumed within the time fixed by the court is considered to be rejected.

Cross References

Effect of rejection of lease of railroad line, see section 1169.

Library References:

C.J.S. Bankruptcy §§ 358-360; Securities Regulation § 6.

West’s Key No. Digests, Bankruptcy Ⓒ3461; Securities Regulation Ⓒ185.10-185.21.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 745. Treatment of accounts

(a) Accounts held by the debtor for a particular customer in separate capacities shall be treated as accounts of separate customers.

(b) If a stockbroker or a bank holds a customer net equity claim against the debtor that arose out of a transaction for a customer of such stockbroker or bank, each such customer of such stockbroker or bank shall be treated as a separate customer of the debtor.

(c) Each trustee's account specified as such on the debtor's books, and supported by a trust deed filed with, and qualified as such by, the Internal Revenue Service, and under the Internal Revenue Code of 1986, shall be treated as a separate customer account for each beneficiary under such trustee account.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2613; Pub.L. 97-222, § 11, July 27, 1982, 96 Stat. 238; Pub.L. 98-353, Title III, § 483, July 10, 1984, 98 Stat. 383; Pub.L. 103-394, Title V, § 501(d)(28), October 22, 1994, 108 Stat. 4146.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 745(a) indicates that each account held by a customer in a separate capacity is to be considered a separate account. This prevents the offset of accounts held in different capacities.

Subsection (b) indicates that a bank or another stockbroker that is a customer of a debtor is considered to hold its customers accounts in separate capacities. Thus a bank or other stockbroker is not treated as a mutual fund for purposes of bulk investment. This protects unrelated customers of a bank or other stockholder from having their accounts offset.

1982 Amendment. Subsec. (c). Pub.L. 97-222, substituted "Each" for "A."

Subsection (c) effects the same result with respect to a trust so that each beneficiary is treated as the customer of the debtor rather than the trust itself. This eliminates any doubt whether a trustee holds a personal ac-

count in a separate capacity from his trustee's account.

References in Text. The Internal Revenue Code of 1954, referred to in subsec. (c), is classified to section 1 et seq. of Title 26, Internal Revenue Code.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Treatment of accounts in commodity broker liquidation cases, see section 763.
Stockbroker defined, see section 101.

Library References:

C.J.S. Bankruptcy §§ 358-360; Securities Regulation § 6.
West's Key No. Digests, Bankruptcy Ⓒ3461; Securities Regulation Ⓒ185.10-185.21.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 746. Extent of customer claims

(a) If, after the date of the filing of the petition, an entity enters into a transaction with the debtor, in a manner that would have made such entity a customer had such transaction occurred before the date of the filing of the

petition, and such transaction was entered into by such entity in good faith and before the qualification under section 322 of this title of a trustee, such entity shall be deemed a customer, and the date of such transaction shall be deemed to be the date of the filing of the petition for the purpose of determining such entity's net equity.

(b) An entity does not have a claim as a customer to the extent that such entity transferred to the debtor cash or a security that, by contract, agreement, understanding, or operation of law, is—

- (1) part of the capital of the debtor; or
- (2) subordinated to the claims of any or all creditors.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2613; Pub.L. 97-222, § 12, July 27, 1982, 96 Stat. 238.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 746(a) protects entities who deal in good faith with the debtor after the filing of the petition and before a trustee is appointed by deeming such entities to be customers. The principal application of this section will be in an involuntary case before the order for relief, because § 701(b) requires prompt appointment of an interim trustee after the order for relief.

Subsection (b) indicates that an entity who holds securities that are either part of the capital of the debtor or that are subordinated to the claims of any creditor of the debtor is not a customer with respect to those securities. This subsection will apply when the stockbroker has sold securities in itself to the customer or when the customer has otherwise placed such securities in an account with the stockbroker.

Cross References

Allowance of claims or interests, see section 502.

Library References:

C.J.S. Bankruptcy §§ 358-360; Securities Regulation § 6.
West's Key No. Digests, Bankruptcy ⇨3461; Securities Regulation ⇨185.10-185.21.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 747. Subordination of certain customer claims

Except as provided in section 510 of this title, unless all other customer net equity claims have been paid in full, the trustee may not pay in full or pay in part, directly or indirectly, any net equity claim of a customer that was, on the date the transaction giving rise to such claim occurred—

- (1) an insider;
- (2) a beneficial owner of at least five percent of any class of equity securities of the debtor, other than—

(A) nonconvertible stock having fixed preferential dividend and liquidation rights; or

(B) interests of limited partners in a limited partnership;

(3) a limited partner with a participation of at least five percent in the net assets or net profits of the debtor; or

(4) an entity that, directly or indirectly, through agreement or otherwise, exercised or had the power to exercise control over the management or policies of the debtor.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2613; Pub.L. 97-222, § 13, July 27, 1982, 96 Stat. 238.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 747 subordinates to other customer claims, all

claims of a customer who is an insider, a five percent owner of the debtor, or otherwise in control of the debtor.

Cross References

Insider defined, see section 101.

Library References:

C.J.S. Bankruptcy §§ 358-360; Securities Regulation § 6.

West's Key No. Digests, Bankruptcy Ⓒ3461; Securities Regulation Ⓒ185.10-185.21.

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See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 748. Reduction of securities to money

As soon as practicable after the date of the order for relief, the trustee shall reduce to money, consistent with good market practice, all securities held as property of the estate, except for customer name securities delivered or reclaimed under section 751 of this title.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2614.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 748 requires the trustee to liquidate all securities, except for customer name securities, of the estate in a manner consistent with good market practice. The trustee should refrain from flooding a thin market with a large percentage of shares in any one issue. If the trustee holds restricted securities or securities in which trading has been suspended, then the trustee must

arrange to liquidate such securities in accordance with the securities laws. A private placement may be the only exemption available with the customer of the debtor the best prospect for such a placement. The subsection does not permit such a customer to bid in his net equity as part of the purchase price; a contrary result would permit a customer to receive a greater percentage on his net equity claim than other customers.

Cross References

Reduction of certain securities and property to money in commodity broker liquidation cases, see section 766.

Library References:

C.J.S. Bankruptcy §§ 358-360; Securities Regulation § 6.

West's Key No. Digests, Bankruptcy Ⓒ3461; Securities Regulation Ⓒ185.10-185.21.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 749. Voidable transfers

(a) Except as otherwise provided in this section, any transfer of property that, but for such transfer, would have been customer property, may be avoided by the trustee, and such property shall be treated as customer property, if and to the extent that the trustee avoids such transfer under section 544, 545, 547, 548, or 549 of this title. For the purpose of such sections, the property so transferred shall be deemed to have been property of the debtor and, if such transfer was made to a customer or for a customer's benefit, such customer shall be deemed, for the purposes of this section, to have been a creditor.

(b) Notwithstanding sections 544, 545, 547, 548, and 549 of this title, the trustee may not avoid a transfer made before five days after the order for relief if such transfer is approved by the Commission by rule or order, either before or after such transfer, and if such transfer is—

(1) a transfer of a securities contract entered into or carried by or through the debtor on behalf of a customer, and of any cash, security, or other property margining or securing such securities contract; or

(2) the liquidation of a securities contract entered into or carried by or through the debtor on behalf of a customer.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2614; Pub.L. 97-222, § 14, July 27, 1982, 96 Stat. 238.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 749 indicates that if the trustee avoids a transfer, property recovered is customer property to any extent it would have been customer property

but for the transfer. The section clarifies that a customer who receives a transfer of property of the debtor is a creditor and that property in a customer's account is property of a creditor for purposes of the avoiding powers.

Cross References

Voidable transfers in commodity broker liquidation cases, see section 764.

Library References:

C.J.S. Bankruptcy §§ 358-360; Securities Regulation § 6.

West's Key No. Digests, Bankruptcy ⌘3461; Securities Regulation ⌘185.10-185.21.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 750. Distribution of securities

The trustee may not distribute a security except under section 751 of this title.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2614.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 750 forbids the trustee from distributing a security other than a customer name security. The term “distribution” refers to a distribution to

customers in satisfaction of net equity claims and is not intended to preclude the trustee from liquidating securities under proposed 11 U.S.C. 748.

Cross References

Distribution of property of estate, see section 726.

Distribution in chapter 11 cases, see section 1143.

Library References:

C.J.S. Bankruptcy §§ 358-360; Securities Regulation § 6.

West's Key No. Digests, Bankruptcy Ⓒ3461; Securities Regulation Ⓒ185.10-185.21.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 751. Customer name securities

The trustee shall deliver any customer name security to or on behalf of the customer entitled to such security, unless such customer has a negative net equity. With the approval of the trustee, a customer may reclaim a customer name security after payment to the trustee, within such period as the trustee allows, of any claim of the debtor against such customer to the extent that such customer will not have a negative net equity after such payment.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2614.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 751 requires the trustee to deliver a customer name security to the customer entitled to such security unless the customer has a negative net equity. The customer's net equity will be negative when the amount owed by the customer to the stockbroker exceeds the liquidation value of the noncustomer name securities in the

customer's account. If the customer is a net debtor of the stockbroker, then the trustee may permit the customer to repay debts to the stockbroker so that the customer will no longer be in debt to the stockbroker. If the customer refuses to pay such amount, then the court may order the customer to endorse the security in order that the trustee may liquidate such property.

Library References:

C.J.S. Bankruptcy §§ 358-360; Securities Regulation § 6.

West's Key No. Digests, Bankruptcy Ⓒ3461; Securities Regulation Ⓒ185.10-185.21.

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§ 752. Customer property

(a) The trustee shall distribute customer property ratably to customers on the basis and to the extent of such customers' allowed net equity claims and in priority to all other claims, except claims of the kind specified in section 507(a)(1) of this title that are attributable to the administration of such customer property.

(b)(1) The trustee shall distribute customer property in excess of that distributed under subsection (a) of this section in accordance with section 726 of this title.

(2) Except as provided in section 510 of this title, if a customer is not paid the full amount of such customer's allowed net equity claim from customer property, the unpaid portion of such claim is a claim entitled to distribution under section 726 of this title.

(c) Any cash or security remaining after the liquidation of a security interest created under a security agreement made by the debtor, excluding property excluded under section 741(4)(B) of this title, shall be apportioned between the general estate and customer property in the same proportion as the general estate of the debtor and customer property were subject to such security interest.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2614; Pub.L. 97-222, § 15, July 27, 1982, 96 Stat. 238; Pub.L. 98-353, Title III, § 484, July 10, 1984, 98 Stat. 383.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 752(a) requires the trustee to distribute customer property to customers based on the amount of their net equity claims. Customer property is to be distributed in priority to all claims except expenses of administration entitled to priority under § 507(1). It is anticipated that the court will apportion such administrative claims on an equitable basis between the general estate and the customer property of the debtor.

Subsection (b)(1) indicates that in the event customer property exceeds customers net equity claims and administrative expenses, the excess pours over into the general estate. This event would occur if the value of securities increased dramatically after the order for relief but before liquidation by the trustee. Subsection (b)(2) indicates that the unpaid portion of a customer's net equity claim is entitled to share in the general estate as an unsecured claim unless subordinated by the court under proposed 11 U.S.C. 501. A net equity claim of a customer that is subordinated under section 747 is entitled to share in distribution under section 726(a)(2) unless subordinated under section 510 independently of the subordination under section 747.

Subsection (c) provides for apportionment between customer property and the general estate of any equity of the debtor in property

remaining after a secured creditor liquidates a security interest. This might occur if a stockbroker hypothecates securities of his own and of his customers if the value of the hypothecated securities exceeds the debt owed to the secured party. The apportionment is to be made according to the ratio of customer property and general property of the debtor that comprised the collateral. The subsection refers to cash and securities of customers to include any customer property unlawfully converted by the stockbroker in the course of such a transaction. The apportionment is made subject to section 741(4)(B) to insure that property in a customer's account that is owed to the stockbroker will not be considered customer property. This recognizes the right of the stockbroker to withdraw money that has been erroneously placed in a customer's account or that is otherwise owing to the stockbroker.

Effective Date of 1984 Amendments. See section 553 of Pub. L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub. L. 98-353, see section 551 of Pub. L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Distribution in chapter 11 cases, see section 1143.

Distribution of

Customer property in commodity broker liquidation cases, see section 766.

Property of estate, see section 726.

Priorities, see section 507.

Library References:

C.J.S. Bankruptcy §§ 358–360; Securities Regulation § 6.

West's Key No. Digests, Bankruptcy Ⓒ3461; Securities Regulation Ⓒ185.10–185.21.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

SUBCHAPTER IV—COMMODITY BROKER LIQUIDATION

Cross References

Powers and duties of trustee in investor protection liquidation proceedings, see section 78fff–1 of Title 15, Commerce and Trade.

Subchapter generally applicable only in case under chapter concerning commodity broker, see section 103.

§ 761. Definitions for the subchapter

In this subchapter—

- (1) “Act” means Commodity Exchange Act;
- (2) “clearing organization” means a derivatives clearing organization registered under the Act;
- (3) “Commission” means Commodity Futures Trading Commission;
- (4) “commodity contract” means—
 - (A) with respect to a futures commission merchant, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;
 - (B) with respect to a foreign futures commission merchant, foreign future;
 - (C) with respect to a leverage transaction merchant, leverage transaction;
 - (D) with respect to a clearing organization, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization; or
 - (E) with respect to a commodity options dealer, commodity option;
- (5) “commodity option” means agreement or transaction subject to regulation under section 4c(b) of the Act;
- (6) “commodity options dealer” means person that extends credit to, or that accepts cash, a security, or other property from, a customer of such person for the purchase or sale of an interest in a commodity option;
- (7) “contract market” means a registered entity;
- (8) “contract of sale”, “commodity”, “derivatives clearing organization”, “future delivery”, “board of trade”, “registered entity”, and “futures commission merchant” have the meanings assigned to those terms in the Act;
- (9) “customer” means—

(A) with respect to a futures commission merchant—

(i) entity for or with whom such futures commission merchant deals and that holds a claim against such futures commission merchant on account of a commodity contract made, received, acquired, or held by or through such futures commission merchant in the ordinary course of such futures commission merchant's business as a futures commission merchant from or for the commodity futures account of such entity; or

(ii) entity that holds a claim against such futures commission merchant arising out of—

(I) the making, liquidation, or change in the value of a commodity contract of a kind specified in clause (i) of this subparagraph;

(II) a deposit or payment of cash, a security, or other property with such futures commission merchant for the purpose of making or margining such a commodity contract; or

(III) the making or taking of delivery on such a commodity contract;

(B) with respect to a foreign futures commission merchant—

(i) entity for or with whom such foreign futures commission merchant deals and that holds a claim against such foreign futures commission merchant on account of a commodity contract made, received, acquired, or held by or through such foreign futures commission merchant in the ordinary course of such foreign futures commission merchant's business as a foreign futures commission merchant from or for the foreign futures account of such entity; or

(ii) entity that holds a claim against such foreign futures commission merchant arising out of—

(I) the making, liquidation, or change in value of a commodity contract of a kind specified in clause (i) of this subparagraph;

(II) a deposit or payment of cash, a security, or other property with such foreign futures commission merchant for the purpose of making or margining such a commodity contract; or

(III) the making or taking of delivery on such a commodity contract;

(C) with respect to a leverage transaction merchant—

(i) entity for or with whom such leverage transaction merchant deals and that holds a claim against such leverage transaction merchant on account of a commodity contract engaged in by or with such leverage transaction merchant in the ordinary course of such leverage transaction merchant's business as a leverage transaction merchant from or for the leverage account of such entity; or

(ii) entity that holds a claim against such leverage transaction merchant arising out of—

(I) the making, liquidation, or change in value of a commodity contract of a kind specified in clause (i) of this subparagraph;

(II) a deposit or payment of cash, a security, or other property with such leverage transaction merchant for the purpose of entering into or margining such a commodity contract; or

(III) the making or taking of delivery on such a commodity contract;

(D) with respect to a clearing organization, clearing member of such clearing organization with whom such clearing organization deals and that holds a claim against such clearing organization on account of cash, a security, or other property received by such clearing organization to margin, guarantee, or secure a commodity contract in such clearing member's proprietary account or customers' account; or

(E) with respect to a commodity options dealer—

(i) entity for or with whom such commodity options dealer deals and that holds a claim on account of a commodity contract made, received, acquired, or held by or through such commodity options dealer in the ordinary course of such commodity options dealer's business as a commodity options dealer from or for the commodity options account of such entity; or

(ii) entity that holds a claim against such commodity options dealer arising out of—

(I) the making of, liquidation of, exercise of, or a change in value of, a commodity contract of a kind specified in clause (i) of this subparagraph; or

(II) a deposit or payment of cash, a security, or other property with such commodity options dealer for the purpose of making, exercising, or margining such a commodity contract;

(10) "customer property" means cash, a security, or other property, or proceeds of such cash, security, or property, received, acquired, or held by or for the account of the debtor, from or for the account of a customer—

(A) including—

(i) property received, acquired, or held to margin, guarantee, secure, purchase, or sell a commodity contract;

(ii) profits or contractual or other rights accruing to a customer as a result of a commodity contract;

(iii) an open commodity contract;

(iv) specifically identifiable customer property;

(v) warehouse receipt or other document held by the debtor evidencing ownership of or title to property to be delivered to fulfill a commodity contract from or for the account of a customer;

(vi) cash, a security, or other property received by the debtor as payment for a commodity to be delivered to fulfill a commodity contract from or for the account of a customer;

(vii) a security held as property of the debtor to the extent such security is necessary to meet a net equity claim based on a security of the same class and series of an issuer;

(viii) property that was unlawfully converted from and that is the lawful property of the estate; and

(ix) other property of the debtor that any applicable law, rule, or regulation requires to be set aside or held for the benefit of a customer, unless including such property as customer property would not significantly increase customer property; but

(B) not including property to the extent that a customer does not have a claim against the debtor based on such property;

(11) “foreign future” means contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade outside the United States;

(12) “foreign futures commission merchant” means entity engaged in soliciting or accepting orders for the purchase or sale of a foreign future or that, in connection with such a solicitation or acceptance, accepts cash, a security, or other property, or extends credit to margin, guarantee, or secure any trade or contract that results from such a solicitation or acceptance;

(13) “leverage transaction” means agreement that is subject to regulation under section 19 of the Commodity Exchange Act, and that is commonly known to the commodities trade as a margin account, margin contract, leverage account, or leverage contract;

(14) “leverage transaction merchant” means person in the business of engaging in leverage transactions;

(15) “margin payment” means payment or deposit of cash, a security, or other property, that is commonly known to the commodities trade as original margin, initial margin, maintenance margin, or variation margin, including mark-to-market payments, settlement payments, variation payments, daily settlement payments, and final settlement payments made as adjustments to settlement prices;

(16) “member property” means customer property received, acquired, or held by or for the account of a debtor that is a clearing organization, from or for the proprietary account of a customer that is a clearing member of the debtor; and

(17) “net equity” means, subject to such rules and regulations as the Commission promulgates under the Act, with respect to the aggregate of all of a customer’s accounts that such customer has in the same capacity—

(A) the balance remaining in such customer’s accounts immediately after—

(i) all commodity contracts of such customer have been transferred, liquidated, or become identified for delivery; and

(ii) all obligations of such customer in such capacity to the debtor have been offset; plus

(B) the value, as of the date of return under section 766 of this title, of any specifically identifiable customer property actually returned to such customer before the date specified in subparagraph (A) of this paragraph; plus

(C) the value, as of the date of transfer, of—

(i) any commodity contract to which such customer is entitled that is transferred to another person under section 766 of this title; and

(ii) any cash, security, or other property of such customer transferred to such other person under section 766 of this title to margin or secure such transferred commodity contract.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2615; Pub.L. 27-222, § 16, July 27, 1982, 96 Stat. 238; Pub.L. 98-353, Title III, § 485, July 10, 1984, 98 Stat. 383; Pub.L. 103-394, Title V, § 501(d)(29), October 22, 1994, 108 Stat. 4146; Pub.L. 106-554, § 1(a)(5) [Title I, § 112(c)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763- .

Historical and Revision Notes

2000 Amendments. Par. (2). Pub.L. Pub.L. 106-554, § 1(a)(5) [Title I, § 112(c)(6)(A)], revised par. (2). Prior to amendment, par. (2) read as follows:

“(2) ‘clearing organization’ means organization that clears commodity contracts made on, or subject to the rules of, a contract market or board of trade;”.

Par. (7). Pub.L. Pub.L. 106-554, § 1(a)(5) [Title I, § 112(c)(6)(B)], revised par. (7). Prior to amendment, par. (7) read as follows:

“(7) ‘contract market’ means board of trade designated as a contract market by the Commission under the Act;”.

Par. (8). Pub.L. Pub.L. 106-554, § 1(a)(5) [Title I, § 112(c)(6)(C)], revised par. (8). Prior to amendment, par. (8) read as follows:

“(8) ‘contract of sale’, ‘commodity’, ‘future delivery’, ‘board of trade’, and ‘future commission merchant’ have the meanings assigned to those terms in the Act.”.

Notes of Committee on the Judiciary, Senate Report No. 95-989. Paragraph (1) defines “Act” to mean the Commodity Exchange Act [section 1 et seq. of Title 7, Agriculture].

Paragraph (2) defines “clearing organization” to mean an organization that clears (i. e., matches purchases and sales) commodity futures contracts made on or subject to the rules of a contract market or commodity options transactions made on or subject to the rules of a commodity option exchange. Although commodity option trading on exchanges is currently prohibited, it is anticipated that CFTC may permit such trading in the future.

Paragraphs (3) and (4) define terms “Commission” and “commodity futures contract”.

Paragraph (5) [now (4)] defines “commodity contract” to mean a commodity futures contract (§ 761(4)), a commodity option (§ 761(6)), or a leverage contract (§ 761(15)).

Paragraph (6) [now (5)] defines “commodity option” by reference to section 4c(b) of the Commodity Exchange Act [section 6c(b) of Title 7, Agriculture].

Paragraphs (7) [now (6)], (8) [now (7)], and (9) [now (8)], define “commodity options dealer,” “contract market,” “contract of sale,” “commodity,” “future delivery,” “board of trade,” and “futures commission merchant.”

Paragraph (10) [now (9)] defines the term “customer” to mean with respect to a futures commission merchant or a foreign futures commission merchant, the entity for whom the debtor carries a commodity futures contract or foreign future, or with whom such a contract is carried (such as another commodity broker), or from whom the debtor has received, acquired, or holds cash, securities, or other property arising out of or connected with specified transactions involving commodity futures contracts or foreign futures. This section also defines “customer” in the context of leverage transaction merchants, clearing organizations, and commodity options dealers. Persons associated with a commodity broker, such as its employees, officers, or partners, may be customers under this definition.

The definition of “customer” serves to isolate that class of persons entitled to the protection subchapter IV provides to customers. In addition, section 101(5) defines “commodity broker” to mean a futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, with respect to which there is a customer. Accordingly, the definition of customer also serves to

designate those entities which must utilize chapter 7 and are precluded from reorganizing under chapter 11.

Paragraph (11) [now (10)] defines “customer property” to mean virtually all property or proceeds thereof, received, acquired, or held by or for the account of the debtor for a customer arising out of or in connection with a transaction involving a commodity contract.

Paragraph (12) defines “distribution share” to mean the amount to which a customer is entitled under section 765(a).

Paragraphs (13) [now (11)], (14) [now (12)], (15) [now (13)], and (16) [now (14)], define “foreign future,” “foreign futures commission merchant,” “leverage transaction,” and “leverage transaction merchant.”

Paragraph (17) [now (15)] defines “margin payment” to mean a payment or deposit commonly known to the commodities trade as original margin, initial margin, or variation margin.

Paragraph (18) [now (16)] defines “member property.”

Paragraph (19) [now (17)] defines “net equity” to be the sum of (A) the value of all customer property remaining in a customer’s account immediately after all commodity contracts of such customer have been transferred, liquidated, or become identified for delivery and all obligations of such customer to the debtor have been offset (such as margin payments, whether or not called, and brokerage commissions) plus (B) the value of specifically identifiable customer property previously returned to the customer by the trustee, plus (C) if the trustee has transferred any commodity contract to which the customer is entitled or any margin or security for such contract, the value of such contract and margin or security. Net equity, therefore, will be the total amount of customer property to which a customer is entitled as of the date of the filing of the bankruptcy petition, although valued at subsequent dates. The Commission is given authority to promulgate rules and regulations to further refine this definition.

Notes of Committee on the Judiciary, House Report No. 95-595. Paragraph (8) [now (4)] is a dynamic definition of “contractual commitment”. The definition will vary depending on the character of the debtor in each case. If the debtor is a futures commission merchant or a clearing organization, then subparagraphs (A) and (D) indicate that the defini-

tion means a contract of sale of a commodity for future delivery on a contract market. If the debtor is a foreign futures commission merchant, a leverage transaction merchant, or a commodity options dealer, then subparagraphs (B), (C), and (E) indicate that the definition means foreign future, leverage transaction, or commodity option, respectively.

Paragraph (9) defines “customer” in a similar style. It is anticipated that a debtor with multifaceted characteristics will have separate estates for each different kind of customer. Thus, a debtor that is a leverage transaction merchant and a commodity options, dealer would have separate estates for the leverage transaction customers and for the options customers, and a general estate for other creditors. Customers for each kind of commodity broker, except the clearing organization, arise from either of two relationships. In subparagraphs (A), (B), (C), and (E), clause (i) treats with customers to the extent of contractual commitments with the debtor in either a broker or a dealer relationship. Clause (ii) treats with customers to the extent of proceeds from contractual commitments or deposits for the purpose of making contractual commitments. The customer of the clearing organization is a member with a proprietary or customers’ account.

Paragraph (10) defines “customer property” to include all property in customer accounts and property that should have been in those accounts but was diverted through conversion or mistake. Clause (i) refers to customer property not properly segregated by the debtor or customer property converted and then recovered so as to become property of the estate. Clause (vii) is intended to exclude property that would cost more to recover from a third party than the value of the property itself. Subparagraph (B) excludes property in a customer’s account that belongs to the commodity broker, such as a contract placed in the account by error, or cash due the broker for a margin payment that the broker has made.

Paragraph (15) [now (17)] defines “net equity” to include the value of all contractual commitments at the time of liquidation or transfer less any obligations owed by the customer to the debtor, such as brokerage fees. In addition, the term includes the value of any specifically identifiable property as of the date of return to the customer and the value of any customer property transferred to another commodity broker as of the date of transfer. This definition places the risk of market fluctua-

tions on the customer until commitments leave the estate.

Legislative Statements. Subchapter IV of chapter 7 represents a compromise between similar chapters in the House bill and Senate amendment. Section 761(2) of the House amendment defines “clearing organization” to cover an organization that clears commodity contracts on a contract market or a board of trade; the expansion of the definition is intended to include clearing organizations that clear commodity options. Section 761(4) of the House amendment adopts the term “commodity contract” as used in section 761(5) of the Senate amendment but with the more precise substantive definitions contained in section 761(8) of the House bill. The definition is modified to insert “board of trade” to cover commodity options. Section 761(5) of the House amendment adopts the definition contained in section 761(6) of the Senate amendment in preference to the definition contained in section 761(4) of the House bill which erroneously included onions. Section 761(9) of the House amendment represents a compromise between similar provisions contained in section 761(10) of the Senate amendment and section 761(9) of the House bill. The compromise adopts the substance contained in the House bill and adopts the terminology of “commodity contract” in lieu of “contractual commitment” as suggested in the Senate amendment. Section 761(10) of the House amendment represents a compromise between similar sections in the House bill and Senate amendment regarding the definition of “customer property.” The definition of “distribution share” contained in section 761(12) of the Senate amendment is deleted as unnecessary. Section 761(12) of the House amendment adopts a definition of “foreign futures commission merchant” similar to the definition contained in section 761(14) of the Senate amendment. The definition is modified to

cover either an entity engaged in soliciting orders or the purchase or sale of a foreign future, or an entity that accepts cash, a security, or other property for credit in connection with such a solicitation or acceptance. Section 761(13) of the House amendment adopts a definition of “leverage transaction” identical to the definition contained in section 761(15) of the Senate amendment. Section 761(15) of the House amendment adopts the definition of “margin payment” contained in section 761(17) of the Senate amendment. Section 761(17) of the House amendment adopts a definition of “net equity” derived from section 761(15) of the House bill.

References in Text. The Commodity Exchange Act, referred to in pars. (1), (7), (8), and (17), is Act Sept. 21, 1922, c. 369, 42 Stat. 998, which is classified to section 1 et seq. of Title 7, Agriculture.

Section 4c(b) of the Commodity Exchange Act, referred to in par. (5), is classified to section 6c(b) of Title 7.

Section 19 of the Commodity Exchange Act, referred to in par. (13), is classified to section 23 of Title 7.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

Effective Date of 1984 Amendments. See section 553 of Pub. L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Commodity broker defined, see section 101.

Definitions applicable in

Chapter 9 cases, see section 902.

Railroad reorganization cases, see section 1162.

Reorganization cases, see section 1101.

Stockbroker liquidation cases, see section 741.

Reception of margin payments by commodity brokers or forward contract merchants as taking for value, see section 548.

Security as not including leverage transaction as defined in this section, see section 101.

Library References:

C.J.S. Bankruptcy §§ 358-360; Exchanges §§ 1, 2.

West's Key No. Digests, Bankruptcy Ⓒ3461: Commodity Futures Trading Regulation Ⓒ1.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 762. Notice to the Commission and right to be heard

(a) The clerk shall give the notice required by section 342 of this title to the Commission.

(b) The Commission may raise and may appear and be heard on any issue in a case under this chapter.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2618.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 762 provides that the Commission shall be given such notice as is appropriate of an order for relief in

a bankruptcy case and that the Commission may raise and may appear and may be heard on any issue in case involving a commodity broker liquidation.

Cross References

Notice in chapter 9 cases, see section 923.

Notice to Security Investor Protection Corporation and Securities and Exchange Commission, see section 743.

Library References:

C.J.S. Bankruptcy §§ 358-360; Exchanges §§ 1, 2.

West's Key No. Digests, Bankruptcy ⌘3461; Commodity Futures Trading Regulation ⌘1.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 763. Treatment of accounts

(a) Accounts held by the debtor for a particular customer in separate capacities shall be treated as accounts of separate customers.

(b) A member of a clearing organization shall be deemed to hold such member's proprietary account in a separate capacity from such member's customers' account.

(c) The net equity in a customer's account may not be offset against the net equity in the account of any other customer.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2618; Pub.L. 98-353, Title III, § 486, July 10, 1984, 98 Stat. 383.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 763 provides for separate treatment of accounts held in separate capacities. A deficit in one account held for a customer may not be offset against the net equity in another account held by the same customer in a separate capacity or held by another customer.

Effective Date of 1984 Amendments. See section 553 of Pub. L. 98-353, Title III,

July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Treatment of accounts in stockholder liquidation cases, see section 745.

Library References:

C.J.S. Bankruptcy §§ 358-360; Exchanges §§ 1, 2.

West's Key No. Digests, Bankruptcy Ⓒ3461; Commodity Futures Trading Regulation Ⓒ1.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 764. Voidable transfers

(a) Except as otherwise provided in this section, any transfer by the debtor of property that, but for such transfer, would have been customer property, may be avoided by the trustee, and such property shall be treated as customer property, if and to the extent that the trustee avoids such transfer under section 544, 545, 547, 548, 549, or 724(a) of this title. For the purpose of such sections, the property so transferred shall be deemed to have been property of the debtor, and, if such transfer was made to a customer or for a customer's benefit, such customer shall be deemed, for the purposes of this section, to have been a creditor.

(b) Notwithstanding sections 544, 545, 547, 548, 549, and 724(a) of this title, the trustee may not avoid a transfer made before five days after the order for relief, if such transfer is approved by the Commission by rule or order, either before or after such transfer, and if such transfer is—

(1) a transfer of a commodity contract entered into or carried by or through the debtor on behalf of a customer, and of any cash, securities, or other property margining or securing such commodity contract; or

(2) the liquidation of a commodity contract entered into or carried by or through the debtor on behalf of a customer.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2618; Pub.L. 97-222, § 17, July 27, 1982, 96 Stat. 240; Pub.L. 98-353, Title III, § 487, July 10, 1984, 98 Stat. 383.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 764 permits the trustee to void any transfer of property that, except for such transfer, would have been customer property, to the extent permitted under section 544, 545, 547, 548, 549, or 724(a).

Notes of Committee on the Judiciary, House Report No. 95-595. Section 764 indicates the extent to which the avoiding powers may be used by the trustee under subchapter IV of chapter 7. If property recovered would have been customer property if never transferred, then subsection (a) indicates that it will be so treated when recovered.

Subsection (b) prohibits avoiding any transaction that occurs before or within five days after the petition if the transaction is approved by the Commission and concerns an open contractual commitment. This enables the Commission to exercise its discretion to protect the integrity of the market by insuring that transactions cleared with other brokers will not be undone on a preference or a fraudulent transfer theory.

Subsection (c) insulates variation margin payments and other deposits from the avoiding powers except to the extent of actual fraud under section 548(a)(1). This facilitates pre-

petition transfers and protects the ordinary course of business in the market.

Legislative Statements. Section 764 of the House amendment is derived from the House bill.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III,

July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Voidable transfers in stockbroker liquidation cases, see section 749.

Library References:

C.J.S. Bankruptcy §§ 358-360; Exchanges §§ 1, 2.

West's Key No. Digests, Bankruptcy Ⓒ3461; Commodity Futures Trading Regulation Ⓒ1.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 765. Customer instructions

(a) The notice required by section 342 of this title to customers shall instruct each customer—

(1) to file a proof of such customer's claim promptly, and to specify in such claim any specifically identifiable security, property, or commodity contract; and

(2) to instruct the trustee of such customer's desired disposition, including transfer under section 766 of this title or liquidation, of any commodity contract specifically identified to such customer.

(b) The trustee shall comply, to the extent practicable, with any instruction received from a customer regarding such customer's desired disposition of any commodity contract specifically identified to such customer. If the trustee has transferred, under section 766 of this title, such a commodity contract, the trustee shall transmit any such instruction to the commodity broker to whom such commodity contract was so transferred.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2619; Pub.L. 97-222, § 18, July 27, 1982, 96 Stat. 240; Pub.L. 98-353, Title III, § 488, July 10, 1984, 98 Stat. 383.

Historical and Revision Notes

Notes of Committee on the Judiciary, House Report No. 95-595. Section 765(a) indicates that a customer must file a proof of claim, including any claim to specifically identifiable property, within such time as the court fixes.

Legislative Statements. Sections 765 and 766 of the House amendment represent a consolidation and redraft of sections 765, 766, 767, and 768 of the House bill and sections 765, 766, 767, and 768 of the Senate amendment. [For additional information see Historical and

Revision Notes under section 766.] In particular, section 765(a) of the House amendment is derived from section 765(a) of the House bill and section 767(a) of the Senate amendment. Under section 765(a) of the House amendment customers are notified of the opportunity to immediately file proofs of claim and to identify specifically identifiable securities, property, or commodity contracts. The customer is also afforded an opportunity to instruct the trustee regarding the customer's desires concerning disposition of the customer's commodity contracts. Section 767(b) makes clear that the

trustee must comply with instructions received to the extent practicable, but in the event the trustee has transferred commodity contracts to a commodity broker, such instructions shall be forwarded to the broker.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III,

July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Executory contracts and unexpired leases, see section 365.

Library References:

C.J.S. Bankruptcy §§ 358-360; Exchanges §§ 1, 2.

West's Key No. Digests, Bankruptcy Ⓒ3461; Commodity Futures Trading Regulation Ⓒ1.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 766. Treatment of customer property

(a) The trustee shall answer all margin calls with respect to a specifically identifiable commodity contract of a customer until such time as the trustee returns or transfers such commodity contract, but the trustee may not make a margin payment that has the effect of a distribution to such customer of more than that to which such customer is entitled under subsection (h) or (i) of this section.

(b) The trustee shall prevent any open commodity contract from remaining open after the last day of trading in such commodity contract, or into the first day on which notice of intent to deliver on such commodity contract may be tendered, whichever occurs first. With respect to any commodity contract that has remained open after the last day of trading in such commodity contract or with respect to which delivery must be made or accepted under the rules of the contract market on which such commodity contract was made, the trustee may operate the business of the debtor for the purpose of—

- (1) accepting or making tender of notice of intent to deliver the physical commodity underlying such commodity contract;
- (2) facilitating delivery of such commodity; or
- (3) disposing of such commodity if a party to such commodity contract defaults.

(c) The trustee shall return promptly to a customer any specifically identifiable security, property, or commodity contract to which such customer is entitled, or shall transfer, on such customer's behalf, such security, property, or commodity contract to a commodity broker that is not a debtor under this title, subject to such rules or regulations as the Commission may prescribe, to the extent that the value of such security, property, or commodity contract does not exceed the amount to which such customer would be entitled under subsection (h) or (i) of this section if such security, property, or commodity contract were not returned or transferred under this subsection.

(d) If the value of a specifically identifiable security, property, or commodity contract exceeds the amount to which the customer of the debtor is entitled under

subsection (h) or (i) of this section, then such customer to whom such security, property, or commodity contract is specifically identified may deposit cash with the trustee equal to the difference between the value of such security, property, or commodity contract and such amount, and the trustee then shall—

(1) return promptly such security, property, or commodity contract to such customer; or

(2) transfer, on such customer's behalf, such security, property, or commodity contract to a commodity broker that is not a debtor under this title, subject to such rules or regulations as the Commission may prescribe.

(e) Subject to subsection (b) of this section, the trustee shall liquidate any commodity contract that—

(1) is identified to a particular customer and with respect to which such customer has not timely instructed the trustee as to the desired disposition of such commodity contract;

(2) cannot be transferred under subsection (c) of this section; or

(3) cannot be identified to a particular customer.

(f) As soon as practicable after the commencement of the case, the trustee shall reduce to money, consistent with good market practice, all securities and other property, other than commodity contracts, held as property of the estate, except for specifically identifiable securities or property distributable under subsection (h) or (i) of this section.

(g) The trustee may not distribute a security or other property except under subsection (h) or (i) of this section.

(h) Except as provided in subsection (b) of this section, the trustee shall distribute customer property ratably to customers on the basis and to the extent of such customers' allowed net equity claims, and in priority to all other claims, except claims of a kind specified in section 507(a)(1) of this title that are attributable to the administration of customer property. Such distribution shall be in the form of—

(1) cash;

(2) the return or transfer, under subsection (c) or (d) of this section, of specifically identifiable customer securities, property, or commodity contracts; or

(3) payment of margin calls under subsection (a) of this section.

Notwithstanding any other provision of this subsection, a customer net equity claim based on a proprietary account, as defined by Commission rule, regulation, or order, may not be paid either in whole or in part, directly or indirectly, out of customer property unless all other customer net equity claims have been paid in full.

(i) If the debtor is a clearing organization, the trustee shall distribute—

(1) customer property, other than member property, ratably to customers on the basis and to the extent of such customers' allowed net equity claims based on such customers' accounts other than proprietary accounts, and in priority to all other claims, except claims of a kind specified in section 507(a)(1) of this title that are attributable to the administration of such customer property; and

(2) member property ratably to customers on the basis and to the extent of such customers' allowed net equity claims based on such customers' proprietary accounts, and in priority to all other claims, except claims of a kind specified in section 507(a)(1) of this title that are attributable to the administration of member property or customer property.

(j)(1) The trustee shall distribute customer property in excess of that distributed under subsection (h) or (i) of this section in accordance with section 726 of this title.

(2) Except as provided in section 510 of this title, if a customer is not paid the full amount of such customer's allowed net equity claim from customer property, the unpaid portion of such claim is a claim entitled to distribution under section 726 of this title.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2619; Pub.L. 97-222, § 19, July 27, 1982, 96 Stat. 240; Pub.L. 98-353, Title III, § 489, July 10, 1984, 98 Stat. 383.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) of this section [subsec. (a) of section 765 of S.Bill (now subsec. (h) of this section)] provides that with respect to liquidation of commodity brokers which are not clearing organizations, the trustee shall distribute customer property to customers on the basis and to the extent of such customers' allowed net equity claims, and in priority to all other claims. This section grants customers' claims first priority in the distribution of the estate. Subsection (b) [subsec. (b) of section 765 of S.Bill (now subsec. (i) of this section)] grants the same priority to member property and other customer property in the liquidation of a clearing organization. A fundamental purpose of these provisions is to ensure that the property entrusted by customers to their brokers will not be subject to the risks of the broker's business and will be available for disbursement to customers if the broker becomes bankrupt.

As a result of section 765 [section 765 of S.Bill (now subsecs. (h) and (i) of this section)], a customer need not trace any funds in order to avoid treatment as a general creditor as was required by the Seventh Circuit in *In re Rosenbaum Grain Corporation* [C.A.7, 1940, 112 F.2d 315].

Section 767 [section 767 of S.Bill (now this section)] sets forth the procedures to be followed by the trustee. It should be emphasized that many of the duties imposed on the trustee are required to be discharged by the trustee immediately upon his appointment. The earlier these duties are discharged the less potential market disruption can result.

The initial duty of the trustee is to endeavor to transfer to another commodity broker or brokers all identified customer accounts together with the customer property margining such accounts, to the extent the trustee deems appropriate. Although it is preferable for all such accounts to be transferred, exigencies may dictate a partial transfer. The requirement that the value of the accounts and property transferred not exceed the customer's distribution share may necessitate a slight delay until the trustee can submit to the court, for its disapproval, an estimate of each customer's distribution share pursuant to section 768 [section 768 of S.Bill (omitted)].

Subsection (c) [subsec. (c) of section 767 of S.Bill (now subsec. (e) of this section)] provides that contemporaneously with the estimate of the distribution share and the transfer of identified customer accounts and property, subsection (c) provides that the trustee should make arrangements for the liquidation of all commodity contracts maintained by the debtor that are not identifiable to specific customers. These contracts would, of course, include all such contracts held in the debtor's proprietary account.

At approximately the same time, the trustee should notify each customer of the debtor's bankruptcy and instruct each customer immediately to submit a claim including any claim to a specifically identifiable security or other property, and advise the trustee as to the desired disposition of commodity contracts carried by the debtor for the customer.

This requirement is placed upon the trustee to insure that producers who have hedged their production in the commodities market are allowed the opportunity to preserve their positions. The theory of the commodity market is that it exists for producers and buyers of commodities and not for the benefit of the speculators whose transactions now comprise the overwhelming majority of trades. Maintenance of positions by hedges may require them to put up additional margin payments in the hours and days following the commodity broker bankruptcy, which they may be unable or unwilling to do. In such cases, their positions will be quickly liquidated by the trustee, but they must have the opportunity to make those margin payments before they are summarily liquidated out of the market to the detriment of their growing crop. The failure of the customer to advise the trustee as to disposition of the customer's commodity contract will not delay a transfer of a contract pursuant to subsection (b) [subsec. (b) of section 767 of S.Bill] so long as the contract can otherwise be identified to the customer. Nor will the failure of the customer to submit a claim prevent the customer from recovering the net equity in that customer's account, absent a claim the customer cannot participate in the determination of the net equity in the account.

If the customer submits instructions pursuant to subsection (a) [subsec. (a) of section 767 of S.Bill (now subsec. (a) of section 765 of this title)] after the customer's commodity contracts are transferred to another commodity broker, the trustee must transmit the instruction to the transferee. If the customer's commodity contracts are not transferred before the customer's instructions are received, the trustee must attempt to comply with the instruction, subject to the provisions of section 767(d) [section 767(d) of S.Bill (now subsec. (e) of this section)].

Under subsection (d) [subsec. (d) of section 767 of S.Bill (now subsec. (e) of this section)], the trustee has discretion to liquidate any commodity contract carried by the debtor at any time. This discretion must be exercised with restraint in such cases, consistent with the purposes of this subchapter and good business practices. The committee intends that hedged accounts will be given special consideration before liquidation as discussed in connection with subsection (c) [subsec. (c) of section 767 of S.Bill (now subsec. (e) of this section)].

Subsection (e) [subsec. (e) of section 767 of S.Bill (now subsecs. (c) and (d) of this section)]

instructs the trustee as to the disposition of any security or other property, not disposed of pursuant to subsection (b) or (d) [subsecs. (b) or (d) of section 767 of S.Bill], that is specifically identifiable to a customer and to which the customer is entitled. Such security or other property must be returned to the customer or promptly transferred to another commodity broker for the benefit of the customer. If the value of the security or other property retained or transferred, together with any other distribution made by the trustee to or on behalf of the customer, exceeds the customer's distribution share the customer must deposit cash with the trustee equal to that difference before the return or transfer of the security or other property.

Subsection (f) [subsec. (f) of section 767 of S.Bill (now subsec. (a) of this section)] requires the trustee to answer margin calls on specifically identifiable customer commodity contracts, but only to the extent that the margin payment, together with any other distribution made by the trustee to or on behalf of the customer, does not exceed the customer's distribution share.

Subsection (g) [subsec. (g) of section 767 of S.Bill (now subsec. (b) of this section)] requires the trustee to liquidate all commodity futures contracts prior to the close of trading in that contract, or the first day on which notice of intent to deliver on that contract may be tendered, whichever occurs first. If the customer desires that the contract be kept open for delivery, the contract should be transferred to another commodity broker pursuant to subsection (b) [subsec. (b) of section 767 of S.Bill].

If for some reason the trustee is unable to transfer a contract on which delivery must be made or accepted and is unable to close out such contract, the trustee is authorized to operate the business of the debtor for the purpose of accepting or making tender of notice of intent to deliver the physical commodity underlying the contract, facilitating delivery of the physical commodity or disposing of the physical commodity in the event of a default. Any property received, not previously held, by the trustee in connection with its operation of the business of the debtor for these purposes, is not by the terms of this subchapter specifically included in the definition of customer property.

Finally, subsection (h) [subsec. (h) of section 767 of S.Bill (now subsec. (f) of this section)] requires the trustee to liquidate the debtor's

estate as soon as practicable and consistent with good market practice, except for specifically identifiable securities or other property distributable under subsection (e) [subsec. (e) of section 767 of S.Bill (now subsecs. (c) and (d) of this section)].

Section 768 [section 768 of S.Bill (omitted)] is an integral part of the commodity broker liquidation procedures outlined in section 767 [section 767 of S.Bill (now this section)]. Prompt action by the trustee to transfer or liquidate customer commodity contracts is necessary to protect customers, the debtor's estate, and the marketplace generally. However, transfers of customer accounts and property valued in excess of the customer's distribution share are prohibited. Since a determination of the customer's distribution share requires a determination of the customer's net equity and the total dollar value of customer property held by or for the account of the debtor, it is possible that the customer's distribution share will not be determined, and thus the customer's contracts and property will not be transferred, on a timely basis. To avoid this problem, and to expedite transfers of customer property, section 768 permits the trustee to make distributions to customers in accordance with a preliminary estimate of the debtor's customer property and each customer's distribution share.

It is acknowledged that the necessity for prompt action may not allow the trustee to assemble all relevant facts before such an estimate is made. However, the trustee is expected to develop as accurate an estimate as possible based on the available facts. Further, in order to permit expeditious action, section 768 [section 768 of S.Bill (omitted)] does not require that notice be given to customers or other creditors before the court approves or disapproves the estimate. Nor does section 768 require that customer claims be received pursuant to section 767(a) [section 767(a) of S.Bill (now section 765(a) of this title)] before the trustee may act upon and in accordance with the estimate. If the estimate is inaccurate, the trustee is absolved of liability for a distribution which exceeds the customer's actual distribution share so long as the distribution did not exceed the customer's estimated distribution share. However, a trustee may have a claim back against a customer who received more than its actual distribution share.

Notes of Committee on the Judiciary, House Report No. 95-595. Subsection (c)

[subsec. (c) of section 765 of H. Bill (now subsec. (e) of this section)] sets forth the general rule requiring the trustee to liquidate contractual commitments that are either not specifically identifiable or with respect to which a customer has not instructed the trustee during the time fixed by the court. Subsection (d) [subsec. (d) of section 765 of H. Bill (now subsec. (b) of this section)] indicates an exception to the time limits in the rule by requiring the trustee to liquidate any open contractual commitment before the last day of trading or the first day during which delivery may be demanded, whichever first occurs, if transfer cannot be effectuated.

Section 766(a) [section 766(a) of H.Bill (now subsec. (g) of this section)] indicates that the trustee may distribute securities or other property only under section 768 [section 768 of H.Bill (now subsecs. (a) and (c) of this section)]. This does not preclude a distribution of cash under section 767(a) [section 767(a) of H.Bill (now subsec. (h) of this section)] or distribution of any excess customer property under section 767(c) [section 767(c) of H.Bill (now subsec. (j) of this section)] to the general estate.

Subsection (b) [subsec. (b) of section 766 of H.Bill (now subsec. (f) of this section)] indicates that the trustee shall liquidate all securities and other property that is not specifically identifiable property as soon as practicable after the commencement of the case and in accordance with good market practice. If securities are restricted or trading has been suspended, the trustee will have to make an exempt sale or file a registration statement. In the event of a private placement, a customer is not entitled to "bid in" his net equity claim. To do so would enable him to receive a greater percentage recovery than other customers.

Section 767(a) [section 767(a) of H.Bill (now subsec. (h) of this section)] provides for the trustee to distribute customer property pro rata according to customers' net equity claims. The court will determine an equitable portion of customer property to pay administrative expenses. Paragraphs (2) and (3) indicate that the return of specifically identifiable property constitutes a distribution of net equity.

Subsection (b) [subsec. (b) of section 767 of H.Bill (now subsec. (i) of this section)] indicates that if the debtor is a clearing organization, customer property is to be segregated into customers' accounts and proprietary accounts

and distributed accordingly without offset. This protects a member's customers from having their claims offset against the member's proprietary account. Subsection (c)(1) [subsec. (c)(1) of section 767 of H.Bill (now subsec. (j)(1) of this section)] indicates that any excess customer property will pour over into the general estate. This unlikely event would occur only if customers fail to file proofs of claim. Subsection (c)(2) [subsec. (c)(2) of section 767 of H.Bill (now subsec. (j)(2) of this section)] indicates that to the extent customers are not paid in full, they are entitled to share in the general estate as unsecured creditors, unless subordinated by the court under proposed 11 U.S.C. 510.

Section 768(a) [section 768(a) of H.Bill (now subsec. (c) of this section)] requires the trustee to return specifically identifiable property to the extent that such distribution will not exceed a customer's net equity claim. Thus, if the customer owes money to a commodity broker, this will be offset under section 761(15)(A)(ii) [now section 761(17)(A)(ii)]. If the value of the specifically identifiable property exceeds the net equity claim, then the customer may deposit cash with the trustee to make up the difference after which the trustee may return or transfer the customer's property.

Subsection (c) [subsec. (c) of section 768 of H.Bill (now subsec. (a) of this section)] permits the trustee to answer all margin calls, to the extent of the customer's net equity claim, with respect to any specifically identifiable open contractual commitment. It should be noted that any payment under subsections (a) or (c) [subsecs. (a) or (c) of section 768 of H.Bill (now subsections. (a) and (c) of this section)] will be considered a reduction of the net equity claim under section 767(a) [section 767(a) of H.Bill (now subsec. (h) of this section)]. Thus the customer's net equity claim is a dynamic amount that varies with distributions of specifically identifiable property or margin payments on such property. This approach differs from the priority given to specifically identifiable property under subchapter III of chapter 7 by limiting the priority effect to a right to receive specific property as part of, rather than in addition to, a ratable share of customer property. This policy is designed to protect the small customer who is unlikely to have property in specifically identifiable form as compared with the professional trader. The CFTC is authorized to make rules defining specifically identi-

fiable property under section 302 of the bill, in title III.

Legislative Statements. Section 766(a) of the House amendment is derived from section 768(c) of the House bill and section 767(f) of the Senate amendment. Section 766(b) of the House amendment is derived from section 765(d) of the House bill, and section 767(g) of the Senate amendment. Section 766(c) of the House amendment is derived from section 768(a) of the House bill and section 767(e) of the Senate amendment. Section 766(d) of the House amendment is derived from section 768(b) of the House bill and the second sentence of section 767(e) of the Senate amendment.

Section 766(e) of the House amendment is derived from section 765(c) of the House bill and sections 767(c) and (d) of the Senate amendment. The provision clarifies that the trustee may liquidate a commodity contract only if the commodity contract cannot be transferred to a commodity broker under section 766(c), cannot be identified to a particular customer, or has been identified with respect to a particular customer, but with respect to which the customer's instructions have not been received.

Section 766(f) of the House amendment is derived from section 766(b) of the House bill and section 767(h) of the Senate amendment. The term "all securities and other property" is not intended to include a commodity contract. Section 766(g) of the House amendment is derived from section 766(a) of the House bill. Section 766(h) of the House amendment is derived from section 767(a) of the House bill and section 765(a) of the Senate amendment. In order to induce private trustees to undertake the difficult and risky job of liquidating a commodity broker, the House amendment contains a provision insuring that a pro rata share of administrative claims will be paid. The provision represents a compromise between the position taken in the House bill, subordinating customer property to all expenses of administration, and the position taken in the Senate amendment requiring the distribution of customer property in advance of any expenses of administration. The position in the Senate amendment is rejected since customers, in any event, would have to pay a brokerage commission or fee in the ordinary course of business. The compromise provision requires customers to pay only those administrative expenses that are attributable to the administration of customer property.

Section 766(i) of the House amendment is derived from section 767(b) of the House bill and contains a similar compromise with respect to expenses of administration as the compromise detailed in connection with section 766(h) of the House amendment. Section 766(j) of the House amendment is derived from section 767(c) of the House bill. No counterpart is contained in the Senate amendment. The provision takes account of the rare case where the estate has customer property in excess of customer claims and administrative expenses attributable to those claims. The section also specifies that to the extent a customer is not paid in full out of customer property, that the unpaid claim will be treated the same as any other general unsecured creditor.

Section 768 of the Senate amendment was deleted from the House amendment as unwise. The provision in the Senate amendment would have permitted the trustee to distribute customer property based upon an estimate of value of the customer's account, with no provision for recapture of excessive disbursements. Moreover, the section would have exonerated the trustee from any liability for such an excessive disbursement. Furthermore, the section is unclear with respect to the customer's rights in the event the trustee makes a distribution less than the share to which the customer is entitled. The provision is deleted in the House amendment so that this difficult problem may be handled on a case-by-case basis by the courts as the facts and circumstances of each case require.

Section 769 of the Senate amendment is deleted in the House amendment as unnecessary. The provision was intended to codify *Board of Trade v. Johnson*, 264 U.S. 1 (1924) [Ill.1924, 44 S.Ct. 232]. *Board of Trade*

against *Johnson*, is codified in section 363(f) of the House amendment which indicates the only five circumstances in which property may be sold free and clear of an interest in such property of an entity other than the estate.

Section 770 of the Senate amendment is deleted in the House amendment as unnecessary. That section would have permitted commodity brokers to liquidate commodity contracts, notwithstanding any contrary order of the court. It would require an extraordinary circumstance, such as a threat to the national security, to enjoin a commodity broker from liquidating a commodity contract. However, in those circumstances, an injunction must prevail. Failure of the House amendment to incorporate section 770 of the Senate amendment does not imply that the automatic stay prevents liquidation of commodity contracts by commodity brokers. To the contrary, whenever by contract, or otherwise, a commodity broker is entitled to liquidate a position as a result of a condition specified in a contract, other than a condition or default of the kind specified in section 365(b)(2) of title 11, the commodity broker may engage in such liquidation. To this extent, the commodity broker's contract with his customer is treated no differently than any other contract under section 365 of title 11.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984, Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Distribution in chapter 11 cases, see section 1143.

Distribution of

Customer property in stockbroker liquidation cases, see section 752.

Property of estate, see section 726.

Executory contracts and unexpired leases, see section 365.

Library References:

C.J.S. Bankruptcy §§ 358-360; Exchanges §§ 1, 2.

West's Key No. Digests, Bankruptcy ⅈ3461; Commodity Futures Trading Regulation ⅈ1.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

SUBCHAPTER V—CLEARING BANK LIQUIDATION

Historical and Revision Notes

Amendments

2000 Amendments. Pub.L. 106-554, § 1(a)(5) [Title I, § 112(c)(5)(B)], Dec. 21,

2000, 114 Stat. 2763, 2763—, added subchapter heading.

§ 781. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Board.—The term “Board” means the Board of Governors of the Federal Reserve System.

(2) Depository institution.—The term “depository institution” has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(3) Clearing bank.—The term “clearing bank” means an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

Added Pub.L. 106-554, § 1(a)(5) [Title I, § 112(c)(5)(B)], Dec. 21, 2000, 114 Stat. 2763, 2763—.

Historical and Revision Notes

2000 Acts. House Report No. 106-645 and Statement by President, see 2000 U.S. Code Cong. and Adm. News, p. 2459.

References in Text. Section 3 of the Federal Deposit Insurance Act, referred to in par. (2), is Act Sept. 21, 1950, c. 967, § 2[3], 64 Stat. 873, which is classified to 12 U.S.C.A. § 1813.

Section 25A of the Federal Reserve Act, referred to in par. (3), is Dec. 23, 1913, c. 6, § 25A, formerly § 25(a), as added Dec. 24,

1919, c. 18, 41 Stat. 378, as amended, which is classified to subchapter II of chapter 6 of Title 12, 12 U.S.C.A. § 611 et seq.

Section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in par. (3), is Pub.L. 102-242, Title IV, § 409, as added by Pub.L. 106-554, § 1(a)(5) [Title I, § 112(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763—, which is classified as 12 U.S.C.A. § 4422.

§ 782. Selection of trustee

(a) In general.—

(1) Appointment.—Notwithstanding any other provision of this title, the conservator or receiver who files the petition shall be the trustee under this chapter, unless the Board designates an alternative trustee.

(2) Successor.—The Board may designate a successor trustee if required.

(b) Authority of trustee.—Whenever the Board appoints or designates a trustee, chapter 3 and sections 704 and 705 of this title shall apply to the Board in the same way and to the same extent that they apply to a United States trustee.

Added Pub.L. 106-554, § 1(a)(5) [Title I, § 112(c)(5)(B)], Dec. 21, 2000, 114 Stat. 2763, 2763—.

Historical and Revision Notes

2000 Acts. House Report No. 106-645 and Statement by President, see 2000 U.S. Code Cong. and Adm. News, p. 2459.

References in Text. Chapter 3, referred to in subsec. (b), is classified to 11 U.S.C.A. § 301 et seq.

§ 783. Additional powers of trustee

(a) Distribution of property not of the estate.—The trustee under this subchapter has power to distribute property not of the estate, including distributions to customers that are mandated by subchapters III and IV of this chapter.

(b) Disposition of institution.—The trustee under this subchapter may, after notice and a hearing—

(1) sell the clearing bank to a depository institution or consortium of depository institutions (which consortium may agree on the allocation of the clearing bank among the consortium);

(2) merge the clearing bank with a depository institution;

(3) transfer contracts to the same extent as could a receiver for a depository institution under paragraphs (9) and (10) of section 11(e) of the Federal Deposit Insurance Act;

(4) transfer assets or liabilities to a depository institution; and

(5) transfer assets and liabilities to a bridge bank as provided in paragraphs (1), (3)(A), (5), and (6) of section 11(n) of the Federal Deposit Insurance Act, paragraphs (9) through (13) of such section, and subparagraphs (A) through (H) and subparagraph (K) of paragraph (4) of such section 11(n), except that—

(A) the bridge bank to which such assets or liabilities are transferred shall be treated as a clearing bank for the purpose of this subsection; and

(B) any references in any such provision of law to the Federal Deposit Insurance Corporation shall be construed to be references to the appointing agency and that references to deposit insurance shall be omitted.

(c) Certain transfers included.—Any reference in this section to transfers of liabilities includes a ratable transfer of liabilities within a priority class.

Added Pub.L. 106-554, § 1(a)(5) [Title I, § 112(c)(5)(B)], Dec. 21, 2000, 114 Stat. 2763, 2763—.

Historical and Revision Notes

2000 Acts. House Report No. 106-645 and Statement by President, see 2000 U.S. Code Cong. and Adm. News, p. 2459.

References in Text. Subchapters III and IV of this chapter, referred to in subsec. (a), are 11 U.S.C.A. §§ 741 et seq. and 761 et seq.

Paragraphs (9) and (10) of section 11(e) of the Federal Deposit Insurance Act, referred to in subsec. (b)(3), are classified to 12 U.S.C.A. § 1821(e)(9), (10).

Paragraphs (1), (3)(A), (5), and (6) of section 11(n) of the Federal Deposit Insurance Act, paragraphs (9) through (13) of such section, and subparagraphs (A) through (H) and subparagraph (K) of paragraph (4) of such section 11(n), referred to in subsec. (b)(5), are classified to 12 U.S.C.A. § 1821(n)(1), (3)(A), (5), (6), and (4)(A) to (K).

§ 784. Right to be heard

The Board or a Federal reserve bank (in the case of a clearing bank that is a member of that bank) may raise and may appear and be heard on any issue in a case under this subchapter.

Added Pub.L. 106-554, § 1(a)(5) [Title I, § 112(c)(5)(B)], Dec. 21, 2000, 114 Stat. 2763, 2763—.

Historical and Revision Notes

2000 Acts. House Report No. 106-645 and Cong. and Adm. News, p. 2459.
Statement by President, see 2000 U.S. Code

CHAPTER 9—ADJUSTMENT OF DEBTS OF A MUNICIPALITY

SUBCHAPTER I—GENERAL PROVISIONS

Sec.

- 901. Applicability of other sections of this title.
- 902. Definitions for this chapter.
- 903. Reservation of State power to control municipalities.
- 904. Limitation on jurisdiction and powers of court.

SUBCHAPTER II—ADMINISTRATION

- 921. Petition and proceedings relating to petition.
- 922. Automatic stay of enforcement of claims against the debtor.
- 923. Notice.
- 924. List of creditors.
- 925. Effect of list of claims.
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- 927. Limitation on recourse.
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- 930. Dismissal.

SUBCHAPTER III—THE PLAN

- 941. Filing of plan.
- 942. Modification of plan.
- 943. Confirmation.
- 944. Effect of confirmation.
- 945. Continuing jurisdiction and closing of the case.
- 946. Effect of exchange of securities before the date of the filing of the petition.

Cross References

- Allowance of administrative expenses of substantial contributors in cases under this chapter, see section 503.
- Chapter 1 of this title and this chapter solely applicable in cases under this chapter except as provided in section 901, see section 103.
- Claims arising from rejection of executory contracts or unexpired leases under this chapter's plans, see section 502.
- Duration of automatic stay, see section 362.
- Entities which may be debtors under this chapter, see section 109.
- Executory contracts and unexpired leases, see section 365.

SUBCHAPTER I—GENERAL PROVISIONS

§ 901. Applicability of other sections of this title

- (a) Sections 301, 344, 347(b), 349, 350(b), 361, 362, 364(c), 364(d), 364(e), 364(f), 365, 366, 501, 502, 503, 504, 506, 507(a)(1), 509, 510, 524(a)(1), 524 (a)(2), 544, 545, 546, 547, 548, 549(a), 549(c), 549(d), 550, 551, 552, 553, 557, 1102, 1103,

1109, 1111(b), 1122, 1123(a)(1), 1123(a)(2), 1123(a)(3), 1123(a)(4), 1123(a)(5), 1123(b), 1124, 1125, 1126(a), 1126(b), 1126(c), 1126(e), 1126(f), 1126(g), 1127(d), 1128, 1129(a)(2), 1129(a)(3), 1129(a)(6), 1129(a)(8), 1129(a)(10), 1129(b)(1), 1129(b)(2)(A), 1129(b)(2)(B), 1142(b), 1143, 1144, and 1145 of this title apply in a case under this chapter.

(b) A term used in a section of this title made applicable in a case under this chapter by subsection (a) of this section or section 103(e) of this title has the meaning defined for such term for the purpose of such applicable section, unless such term is otherwise defined in section 902 of this title.

(c) A section made applicable in a case under this chapter by subsection (a) of this section that is operative if the business of the debtor is authorized to be operated is operative in a case under this chapter.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2621; Pub.L. 98-353, Title III, §§ 353, 490, July 10, 1984, 98 Stat. 361, 383; Pub.L. 100-597, § 3, Nov. 3, 1988, 102 Stat. 3028.

Historical and Revision Notes

Notes of Committee on the Judiciary, House Report No. 95-595. Section 901 makes applicable appropriate provisions of other chapters of proposed title 11. The general rule set out in section 103(e) is that only the provisions of chapters 1 and 9 apply in a chapter 9 case. Section 901 is the exception, and specifies other provisions that do apply. They are as follows:

§ 301. Voluntary cases. Application of this section makes clear, as under current chapter IX [former section 401 et seq. of this title], that a municipal case can be commenced only by the municipality itself. There are no involuntary chapter 9 cases.

§ 344. Self-incrimination; immunity. Application of this section is of no substantive effect for the administration of the case, but merely provides that the general rules in part V of title 18 [section 6001 et seq. of Title 18, Crimes and Criminal Procedure] govern immunity.

§ 347(b). Unclaimed property. This provision currently appears in section 96(d) of chapter IX [former section 416(d) of this title].

§ 349. Effect of dismissal. This section governs the effect of a dismissal of a chapter 9 case. It provides in substance that rights that existed before the case that were disturbed by the commencement of the case are reinstated. This section does not concern grounds for dismissal, which are found in section 926.

§ 361. Adequate protection. Section 361 provides the general standard for the pro-

tection of secured creditors whose property is used in a case under title 11. Its importance lies in its application to sections 362 and 364.

§ 362. Automatic stay. The automatic stay provisions of the general portions of the title are incorporated into chapter 9. There is an automatic stay provided in current Bankruptcy Act § 85(e) [former section 405(e) of this title]. The thrust of section 362 is the same as that of section 85(e), but, of course, its application in chapter 9 is modernized and drafted to conform with the stay generally applicable under the bankruptcy code. An additional part of the automatic stay applicable only to municipal cases is included in section 922.

§§ 364(c), 364(d), 364(e). Obtaining credit. This section governs the borrowing of money by a municipality in reorganization. It is narrower than a comparable provision in current law, section 82(b)(2) [former section 402(b)(2) of this title]. The difference lies mainly in the removal under the bill of the authority of the court to supervise borrowing by the municipality in instances in which none of the special bankruptcy powers are involved. That is, if a municipality could borrow money outside of the bankruptcy court, then it should have the same authority in bankruptcy court, under the doctrine of *Ashton v. Cameron Water District No. 1*, 298 U.S. 513 (1936) [Tex. 1936, 56 S.Ct. 892, 80 L.Ed. 1309, 31 Am. Bankr.Rep.N.S. 96, rehearing denied 57 S.Ct. 5, 299 U.S. 619, 81 L.Ed. 457] and *National League of Cities v. Usery*, 426 U.S. 833 (1976) [Dist.Col.1976, 96 S.Ct. 2465, 49 L.Ed.2d 245,

on remand 429 F.Supp. 703]. Only when the municipality needs special authority, such as subordination of existing liens, or special priority for the borrowed funds, will the court become involved in the authorization.

§ 365. Executory contracts and unexpired leases. The applicability of section 365 incorporates the general power of a bankruptcy court to authorize the assumption or rejection of executory contracts or unexpired leases found in other chapters of the title. This section is comparable to section 82(b)(1) [former section 402(b)(1) of this title] of current law.

§ 366. Utility service. This section gives a municipality the same authority as any other debtor with respect to continuation of utility service during the proceeding, provided adequate assurance of future payment is provided. No comparable explicit provision is found in current law, although the case law seems to support the same result.

§ 501. Filing of proofs of claims. This section permits filing of proofs of claims in a chapter 9 case. Note, however, that section 924 permits listing of creditors' claims, as under chapter 11 and under section 85(b) of chapter IX [former section 405(b) of this title].

§ 502. Allowance of claims. This section applies the general allowance rules to chapter 9 cases. This is no change from current law.

§ 503. Administrative expenses. Administrative expenses as defined in section 503 will be paid in a chapter 9 case, as provided under section 89(1) of current law [former section 409(1) of this title].

§ 504. Sharing of compensation. There is no comparable provision in current law. However, this provision applies generally throughout the proposed law, and will not affect the progress of the case, only the interrelations between attorneys and other professionals that participate in the case.

§ 506. Determination of secured status. Section 506 specifies that claims secured by a lien should be separated, to the extent provided, into secured and unsecured claims. It applies generally. Current law follows this result, though there is no explicit provision.

§ 507(1). Priorities. Paragraph (1) of section 507 requires that administrative expenses be paid first. This rule will apply in chapter 9 cases. It is presently found in section 89(1) [former section 409(1) of this title].

The two other priorities presently found in section 89 [former section 409 of this title] have been deleted. The second for claims arising within 3 months before the case is commenced, is deleted from the statute, but may be within the court's equitable power to award, under the case of *Fosdick v. Schall*, 99 U.S. 235 (1878) [25 L.Ed. 339]. Leaving the provision to the courts permits greater flexibility, as under railroad cases, than an absolute three-month rule. The third priority under current law, for claims which are entitled to priority under the laws of the United States, is deleted because of the proposed amendment to section 3466 of the Revised Statutes contained in section 321(a) of title III of the bill, which previously has given the United States an absolute first priority in Chapter X [former section 501 et seq. of this title] and section 77 [former section 205 of this title] cases. Because the priority rules are regularized and brought together in the bankruptcy laws by this bill, the need for incorporation of priorities elsewhere specified is eliminated.

§ 509. Claims of codebtors. This section provides for the treatment of sureties, guarantors, and codebtors. The general rule of postponement found in the other chapters will apply in chapter 9. This section adopts current law.

§ 510. Subordination of claims. This section permits the court to subordinate, on equitable grounds, any claim, and requires enforcement of contractual subordination agreements, and subordination of securities rescission claims. The section recognizes the inherent equitable power of the court under current law, and the practice followed with respect to contractual provisions.

§ 547. Preferences. Incorporation of section 547 will permit the debtor to recover preferences. This power will be used primarily when those who gave the preferences have been replaced by new municipal officers or when creditors coerced preferential payments. Unlike Bankruptcy Act § 85(h) [former section 405(h) of this title], the section does not permit the appointment of a trustee for the purpose of pursuing preferences. Moreover, this bill does not incorporate the other avoiding powers of a trustee for chapter 9, found in current section 85(h).

§ 550. Liability of transfers. Incorporation of this section is made necessary by the incorporation of the preference section, and

permits recovery by the debtor from a transferee of an avoided preference.

§ 551. Automatic preservation of avoided transfer. Application of section 551 requires preservation of any avoided preference for the benefit of the estate.

§ 552. Postpetition effect of security interest. This section will govern the applicability after the commencement of the case of security interests granted by the debtor before the commencement of the case.

§ 553. Setoff. Under current law, certain setoff is stayed. Application of this section preserves that result, though the setoffs that are permitted under section 553 are better defined than under present law. Application of this section is necessary to stay the setoff and to provide the offsetting creditor with the protection to which he is entitled under present law.

§ 1122. Classification of claims. This section is derived from current section 88(b) [former section 408(b) of this title], and is substantially similar.

§ 1123(a)(1)–(4), (b). Contents of plan. The general provisions governing contents of a chapter 11 plan are made applicable here, with two exceptions relating to the rights of stockholders, which are not applicable in chapter 9 cases. This section expands current law by specifying the contents of a plan in some detail. Section 91 of current law [former section 411 of this title] speaks only in general terms. The substance of the two sections is substantially the same, however.

§ 1124. Impairment of claims. The confirmation standards adopted in chapter 9 are the same as those of chapter 11. This changes current chapter IX [former section 401 et seq. of this title], which requires compliance with the fair and equitable rule. The greater flexibility of proposed chapter 11 is carried over into chapter 9, for there appears to be no reason why the confirmation standards for the two chapters should be different, or why the elimination of the fair and equitable rule from corporate reorganizations should not be followed in municipal debt adjustments. The current chapter IX rule is based on the confirmation rules of current chapter X. The change in the latter suggests a corresponding change in the former. Section 1124 is one part of the new confirmation standard. It defines impairment, for use in section 1129.

§ 1125. Postpetition disclosure and solicitation. The change in the confirmation standard necessitates a corresponding change in the disclosure requirements for solicitation of acceptances of a plan. Under current chapter IX [former section 401 et seq. of this title] there is no disclosure requirement. Incorporation of section 1125 will insure that creditors receive adequate information before they are required to vote on a plan.

§ 1126(a), (b), (c), (e), (f), (g). Acceptance of plan. Section 1126 incorporates the current chapter IX [former section 401 et seq. of this title] acceptance requirement: two-thirds in amount and a majority in number, Bankruptcy Act § 92 [former section 412 of this title]. Section 1125 permits exclusion of certain acceptances from the computation if the acceptances were obtained in bad faith or, unlike current law, if there is a conflict of interest motivating the acceptance.

§ 1127(d). Modification of plan. This section governs the change of a creditor's vote on the plan after a modification is proposed. It is derived from current section 92(e) [former section 410(e) of this title].

§ 1128. Hearing on confirmation. This section requires a hearing on the confirmation of the plan, and permits parties in interest to object. It is the same as Bankruptcy Act §§ 93 [former section 413 of this title] and 94(a) [former section 414(a) of this title], though the provision, comparable to section 206 of current chapter X [former section 606 of this title], permitting a labor organization to appear and be heard on the economic soundness of the plan, has been deleted as more appropriate for the Rules.

§ 1129(a)(2), (3), (8), (b)(1), (2). Confirmation of plan. This section provides the boiler-plate language that the plan be proposed in good faith and that it comply with the provisions of the chapter, and also provides the financial standard for confirmation, which replaces the fair and equitable rule. See 1124, *supra*.

§ 1142(b). Execution of plan. Derived from Bankruptcy Act § 96(b) [former section 416(b) of this title], this section permits the court to order execution and delivery of instruments in order to execute the plan.

§ 1143. Distribution. This section is the same in substance as section 96(d) [former section 416(d) of this title], which requires presentment or delivery of securities within

five years, and bars creditors that do not act within that time.

§ 1144. Revocation of order of confirmation. This section permits the court to revoke the order of confirmation and the discharge if the confirmation of the plan was procured by fraud. There is no comparable provision in current chapter IX [former section 401 et seq. of this title].

Legislative Statements. Chapter 9 of the House amendment represents a compromise between chapter 9 of the House bill and 9 of the Senate amendment. In most respects this chapter follows current law with respect to the adjustment of debts of a municipality. Stylistic changes and minor substantive revisions have been made in order to conform this chapter with other new chapters of the bankruptcy code [this title]. There are few major differences between the House bill and the Senate amendment on this issue. Section 901 indicates the applicability of other sections of title

11 in cases under chapter 9. Included are sections providing for creditors' committees under sections 1102 and 1103.

Effective Date of 1988 Amendment; Application of Amendments. Amendment by Pub.L. 100-597 effective on Nov. 3, 1988, and not applicable to cases commenced under this title prior to such date, see section 12 of Pub.L. 100-597, set out as a note under section 101 of this title.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Confirmation in chapter 9 cases upon compliance with provisions of this title made applicable by this section, see section 943.

Library References:

C.J.S. Bankruptcy §§ 361-367.
West's Key No. Digests, Bankruptcy Ⓒ3481.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 902. Definitions for this chapter

In this chapter—

(1) “property of the estate”, when used in a section that is made applicable in a case under this chapter by section 103(e) or 901 of this title, means property of the debtor;

(2) “special revenues” means—

(A) receipts derived from the ownership, operation, or disposition of projects or systems of the debtor that are primarily used or intended to be used primarily to provide transportation, utility, or other services, including the proceeds of borrowings to finance the projects or systems;

(B) special excise taxes imposed on particular activities or transactions;

(C) incremental tax receipts from the benefited area in the case of tax-increment financing;

(D) other revenues or receipts derived from particular functions of the debtor, whether or not the debtor has other functions; or

(E) taxes specifically levied to finance one or more projects or systems, excluding receipts from general property, sales, or income taxes (other than tax-increment financing) levied to finance the general purposes of the debtor;

(3) “special tax payer” means record owner or holder of legal or equitable title to real property against which a special assessment or special tax has been levied the proceeds of which are the sole source of payment of an obligation issued by the debtor to defray the cost of an improvement relating to such real property;

(4) “special tax payer affected by the plan” means special tax payer with respect to whose real property the plan proposes to increase the proportion of special assessments or special taxes referred to in paragraph (2) of this section assessed against such real property; and

(5) “trustee”, when used in a section that is made applicable in a case under this chapter by section 103(e) or 901 of this title, means debtor, except as provided in section 926 of this title.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2622; Pub.L. 98-353, Title III, § 491, July 10, 1984, 98 Stat. 383; Pub.L. 100-597, § 4, Nov. 3, 1988, 102 Stat. 3028.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. There are six definitions for use in chapter 9. Paragraph (1) defines what claims are included in a chapter 9 case and adopts the definition now found in section 81(1). All claims against the petitioner generally will be included, with one significant exception. Municipalities are authorized, under section 103(c) of the Internal Revenue Code of 1954 [section 103(c) of Title 26, Internal Revenue Code], as amended, to issue tax-exempt industrial development revenue bonds to provide for the financing of certain projects for privately owned companies. The bonds are sold on the basis of the credit of the company on whose behalf they are issued, and the principal, interest, and premium, if any, are payable solely from payments made by the company to the trustee under the bond indenture and do not constitute claims on the tax revenues or other funds of the issuing municipalities. The municipality merely acts as the vehicle to enable the bonds to be issued on a tax-exempt basis. Claims that arise by virtue of these bonds are not among the claims defined by this paragraph and amounts owed by private companies to the holders of industrial development revenue bonds are not to be included among the assets of the municipality that would be affected by the plan. See Cong. Record, 94th Cong., 1st Sess. H.R. 12073 (statement by Mr. Don Edwards, floor manager of the bill in the House). Paragraph (2) de-

fines the court which means the federal district court or federal district judge before which the case is pending. Paragraph (3) [now (1)] specifies that when the term “property of the estate” is used in a section in another chapter made applicable in chapter 9 cases, the term means “property of the debtor”. Paragraphs (4) [now (2)] and (5) [now (3)] adopt the definition of “special taxpayer affected by the plan” that appears in current sections 81(10) [former section 401(10) of this title] and 81(11) [former section 401(11) of this title] of the Bankruptcy Act. Paragraph (6) provides that “trustee” means “debtor” when used in conjunction with chapter 9.

Notes of Committee on the Judiciary, House Report No. 95-595. There are only four definitions for use only in chapter 9. The first specifies that when the term “property of the estate” is used in a section in another chapter made applicable in chapter 9 cases, the term will mean “property of the debtor”. Paragraphs (2) and (3) adopt the definition of “special taxpayer affected by the plan” that appears in current sections 81(10) [former section 401(10) of this title] and 81(11) [former section 401(11) of this title]. Paragraph (4) provides for “trustee” the same treatment as provided for “property of the estate”, specifying that it means “debtor” when used in conjunction with chapter 9.

Legislative Statements. Section 902(2) of the Senate amendment is deleted since the bankruptcy court will have jurisdiction over all cases under chapter 9. The concept of a claim being materially and adversely affected reflected in section 902(1) of the Senate amendment has been deleted and replaced with the new concept of "impairment" set forth in section 1124 of the House amendment and incorporated by reference into chapter 9.

Effective Date of 1988 Amendment; Application of Amendments. Amendment by Pub.L. 100-597 effective on Nov. 3, 1988, and not applicable to cases commenced under this

title prior to such date, see section 12 of Pub.L. 100-597, set out as a note under section 101 of this title.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Definitions applicable in

- Cases under this title, see section 101.
- Commodity broker liquidation cases, see section 761.
- Railroad reorganization cases, see section 1162.
- Reorganization cases, see section 1101.
- Stockbroker liquidation cases, see section 741.

Library References:

- C.J.S. Bankruptcy §§ 361-367.
- West's Key No. Digests, Bankruptcy ☞3481.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 903. Reservation of State power to control municipalities

This chapter does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise, but—

- (1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition; and
- (2) a judgment entered under such a law may not bind a creditor that does not consent to such composition.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2622; Pub.L. 98-353, Title III, § 492, July 10, 1984, 98 Stat. 383.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 903 is derived, with stylistic changes, from section 83 of current Chapter IX [former section 403 of this title]. It sets forth the primary authority of a State, through its constitution, laws, and other powers, over its municipalities. The proviso in section 83, prohibiting State composi-

tion procedures for municipalities, is retained. Deletion of the provision would "permit all States to enact their own versions of Chapter IX [former section 401 et seq. of this title]", Municipal Insolvency, 50 Am.Bankr.L.J. 55, 65, which would frustrate the constitutional mandate of uniform bankruptcy laws. Constitution of the United States, Art. I, Sec. 8.

This section provides that the municipality can consent to the court's orders in regard to use of its income or property. It is contemplated that such consent will be required by the court for the issuance of certificates of indebtedness under section 364(c). Such consent could extend to enforcement of the conditions attached to the certificates or the municipal services to be provided during the proceedings.

Legislative Statements. Section 903 of the House amendment represents a stylistic revision of section 903 of the Senate amend-

ment. To the extent section 903 of the House bill would have changed present law, such section is rejected.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1, of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Authorization by state to be debtor under this chapter, see section 109.

Library References:

C.J.S. Bankruptcy §§ 361-367.

West's Key No. Digests, Bankruptcy Ⓒ3481.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 904. Limitation on jurisdiction and powers of court

Notwithstanding any power of the court, unless the debtor consents or the plan so provides, the court may not, by any stay, order, or decree, in the case or otherwise, interfere with—

- (1) any of the political or governmental powers of the debtor;
- (2) any of the property or revenues of the debtor; or
- (3) the debtor's use or enjoyment of any income-producing property.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2622.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section adopts the policy of section 82(c) of current law [former section 402(c) of this title]. The only change in this section from section 82(c) is to conform the section to the style and cross-references of S. 2266.

Notes of Committee on the Judiciary, House Report No. 95-595. This section

adopts the policy of section 82(c) of current law [former section 402(c) of this title]. The Usury case underlines the need for this limitation on the court's powers. The only change in this section from section 82(c) is to conform the section to the style and cross-references of H.R. 8200. This section makes clear that the court may not interfere with the choices a municipality makes as to what services and benefits it will provide to its inhabitants.

Cross References

Power of court, see section 105.

Library References:

C.J.S. Bankruptcy §§ 361-367.

West's Key No. Digests, Bankruptcy Ⓒ3481.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

SUBCHAPTER II—ADMINISTRATION

Effective Date of 1984 Amendments. Subchapter II spelling corrected by Pub.L. 98-353. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

§ 921. Petition and proceedings relating to petition

(a) Notwithstanding sections 109(d) and 301 of this title, a case under this chapter concerning an unincorporated tax or special assessment district that does not have such district's own officials is commenced by the filing under section 301 of this title of a petition under this chapter by such district's governing authority or the board or body having authority to levy taxes or assessments to meet the obligations of such district.

(b) The chief judge of the court of appeals for the circuit embracing the district in which the case is commenced shall designate the bankruptcy judge to conduct the case.

(c) After any objection to the petition, the court, after notice and a hearing, may dismiss the petition if the debtor did not file the petition in good faith or if the petition does not meet the requirements of this title.

(d) If the petition is not dismissed under subsection (c) of this section, the court shall order relief under this chapter.

(e) The court may not, on account of an appeal from an order for relief, delay any proceeding under this chapter in the case in which the appeal is being taken; nor shall any court order a stay of such proceeding pending such appeal. The reversal on appeal of a finding of jurisdiction does not affect the validity of any debt incurred that is authorized by the court under section 364(c) or 364(d) of this title.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2622; Pub.L. 98-353, Title III, § 494, July 10, 1984, 98 Stat. 383.

Historical and Revision Notes

Notes of Committee on the Judiciary, House Report No. 95-595. Subsection (a) is derived from section 85(a) [former section 405(a) of this title], second sentence, of current law. There is no substantive change in the law. The subsection permits a municipality that does not have its own officers to be moved into chapter 9 by the action of the body or board that has authority to levy taxes for the municipality.

Subsection (b) permits a party in interest to object to the filing of the petition not later

than 15 days after notice. This provision tracks the third sentence of section 85(a) [former section 405(a) of this title], except that the provision for publication in section 85(a) is left to the Rules (See Rule 9-14 [Rules of Bankruptcy Procedure, this title]), and therefore the determinative date is left less definite.

Subsection (c) permits the court to dismiss a petition not filed in good faith or not filed in compliance with the requirements of the chapter. This provision is the fourth sentence of

section 85(a) [former section 405(a) of this title].

Subsection (d) [now (e)] directs the court to order relief on the petition if it does not dismiss the case under subsection (c).

Subsection (e) [now (f)] contains the fifth and sixth sentences of section 85(a) [former section 405(a) of this title].

Legislative Statements. Section 905 of the Senate amendment is incorporated as section 921(b) of the House amendment with the difference that the chief judge of the circuit embracing the district in which the case is commenced designates a bankruptcy judge to conduct the case in lieu of a district judge as under present law. It is intended that a mu-

nicipality may commence a case in any district in which the municipality is located, as under present law. Section 906 of the Senate amendment has been adopted in substance in section 109(c) of the House amendment.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy §§ 361-367.

West's Key No. Digests, Bankruptcy Ⓒ3481.

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See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 922. Automatic stay of enforcement of claims against the debtor

(a) A petition filed under this chapter operates as a stay, in addition to the stay provided by section 362 of this title, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against an officer or inhabitant of the debtor that seeks to enforce a claim against the debtor; and

(2) the enforcement of a lien on or arising out of taxes or assessments owed to the debtor.

(b) Subsections (c), (d), (e), (f), and (g) of section 362 of this title apply to a stay under subsection (a) of this section the same as such subsections apply to a stay under section 362(a) of this title.

(c) If the debtor provides, under section 362, 364, or 922 of this title, adequate protection of the interest of the holder of a claim secured by a lien on property of the debtor and if, notwithstanding such protection such creditor has a claim arising from the stay of action against such property under section 362 or 922 of this title or from the granting of a lien under section 364(d) of this title, then such claim shall be allowable as an administrative expense under section 503(b) of this title.

(d) Notwithstanding section 362 of this title and subsection (a) of this section, a petition filed under this chapter does not operate as a stay of application of pledged special revenues in a manner consistent with section 927 of this title to payment of indebtedness secured by such revenues.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2623; Pub.L. 98-353, Title III, § 495, July 10, 1984, 98 Stat. 384; Pub.L. 100-597, § 5, Nov. 3, 1988, 102 Stat. 3029.

Historical and Revision Notes

Notes of Committee on the Judiciary, House Report No. 95-595. The automatic stay provided under section 362 of title 11 is incomplete for a municipality, because there is the possibility of action by a creditor against an officer or inhabitant of the municipality to collect taxes due the municipality. Section 85(e)(1) of current chapter IX [former section 405(e)(1) of this title] stays such actions. Section 922 carries over that protection into the proposed chapter 9. Subsection (b) applies the provisions for relief from the stay that apply generally in section 362 to the stay under section 922.

Effective Date of 1988 Amendment; Application of Amendments. Amendment by

Pub.L. 100-597 effective on Nov. 3, 1988, and not applicable to cases commenced under this title prior to such date, see section 12 of Pub.L. 100-597, set out as a note under section 101 of this title.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Effect of section 362 of this title in stockbroker liquidation cases, see section 742.
Extension of time generally, see section 108.
Stay of action against codebtor in chapter 13 cases, see section 1301.

Library References:

C.J.S. Bankruptcy §§ 361-367.
West's Key No. Digests, Bankruptcy Ⓒ3481.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 923. Notice

There shall be given notice of the commencement of a case under this chapter, notice of an order for relief under this chapter, and notice of the dismissal of a case under this chapter. Such notice shall also be published at least once a week for three successive weeks in at least one newspaper of general circulation published within the district in which the case is commenced, and in such other newspaper having a general circulation among bond dealers and bondholders as the court designates.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2623.

Historical and Revision Notes

Notes of Committee on the Judiciary, House Report No. 95-595. The notice provisions in section 923 are significantly more sparse than those provided under section 85(d) of chapter IX [former section 405(d) of this title]. The exact contours of the notice to be given under chapter 9 are left to the Rules [Rules of Bankruptcy Procedure, this title]. Because the Rules deal with notice in a municipal case (Rule 9-14), and because section 405(d) of title IV of the bill continues those

Rules in effect to the extent not inconsistent with the bill, the notice provisions of current law and Rules would continue to apply.

Legislative Statements. Section 923 of the House amendment represents a compromise with respect to the notice provisions contained in comparable provisions of the House bill and Senate amendment. As a general matter, title 11 leaves most procedural issues to be determined by the Rules of Bankruptcy Proce-

cedure. Section 923 of the House amendment contains certain important aspects of procedure that have been retained from present law. It is anticipated that the Rules of Bankruptcy

Procedure will adopt rules similar to the present rules for chapter IX of the Bankruptcy Act [former section 401 et seq. of this title].

Cross References

Notice of order for relief, see section 342.

Notice to

Commodity Futures Trading Commission, see section 762.

Security Investor Protection Corporation and Securities and Exchange Commission, see section 743.

Library References:

C.J.S. Bankruptcy §§ 361-367.

West's Key No. Digests, Bankruptcy ⇨3481.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 924. List of creditors

The debtor shall file a list of creditors.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2623.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section adopts the provision presently contained in section 85(b) of Chapter IX [former section 405(b) of this title]. A list of creditors, as complete and accurate as practicable, must be filed with the court.

Notes of Committee on the Judiciary, House Report No. 95-595. This section directs the debtor to file a list of creditors with the court. A comparable provision is presently contained in section 85(b) of chapter IX [former section 405(b) of this title]. The Rules, [Rules of Bankruptcy Procedure, this title], in Rule 9-7, copy the provisions of section 85(b),

with additional matter. As noted above, section 405(d) of title IV will continue those Rules in effect. Because the form, time of filing, and nature of the list, are procedural matters that may call for some flexibility, those details have been left to the Rules.

Legislative Statements. Section 924 of the House amendment is derived from section 924 of the House bill with the location of the filing of the list of creditors to be determined by the rules of bankruptcy procedure. The detailed requirements of section 724 [924] of the Senate bill are anticipated to be incorporated in the rules of bankruptcy procedure.

Cross References

Duty of

Debtor to file list of creditors, see section 521.

Trustee to file list of creditors in chapter 11 cases, see section 1106.

Library References:

C.J.S. Bankruptcy §§ 361-367.

West's Key No. Digests, Bankruptcy ⇨3481.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 925. Effect of list of claims

A proof of claim is deemed filed under section 501 of this title for any claim that appears in the list filed under section 924 of this title, except a claim that is listed as disputed, contingent, or unliquidated.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2623.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 926 [now section 925] follows the policy contained in section 88(a) of the present Act [former section 408(a) of this title], though certain details are left to the Rules. The language of section 926 is the same as that of proposed 11 U.S.C. 1111, which applies in chapter 11 cases. The list of creditors filed under section 924 is

given weight as prima facie evidence of the claims listed (except claims that are listed as disputed, contingent, or unliquidated), which are deemed filed under section 501, obviating the need for listed creditors to file proofs of claim.

Legislative Statements. Section 925 of the Senate amendment regarding venue and fees has been deleted.

Library References:

C.J.S. Bankruptcy §§ 361-367.

West's Key No. Digests, Bankruptcy ☞3481.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 926. Avoiding powers

(a) If the debtor refuses to pursue a cause of action under section 544, 545, 547, 548, 549(a), or 550 of this title, then on request of a creditor, the court may appoint a trustee to pursue such cause of action.

(b) A transfer of property of the debtor to or for the benefit of any holder of a bond or note, on account of such bond or note, may not be avoided under section 547 of this title.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2623; Pub.L. 100-597, § 6, Nov. 3, 1988, 102 Stat. 3029.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section adopts current section 85(h) [former section 405(h) of this title] which provides for a trustee to be appointed for the purpose of pursuing an action under an avoiding power, if the debtor refuses to do so. This section is necessary because a municipality might, by reason of political pressure or desire for future good relations with a particular creditor or class of creditors, make payments to such creditors in the days preceding the petition to the detriment of all other creditors. No change in the elected officials of such a city would automatically occur upon filing of the petition, and it

might be very awkward for those same officials to turn around and demand the return of the payments following the filing of the petition. Hence, the need for a trustee for such purpose.

The general avoiding powers are incorporated by reference in section 901 and are broader than under current law. Preferences, fraudulent conveyances, and other kinds of transfers will thus be voidable.

Incorporated by reference also is the power to accept or reject executory contracts and leases (section 365). Within the definition of executory contracts are collective bargaining

agreements between the city and its employees. Such contracts may be rejected despite contrary State laws. Courts should readily allow in the municipality's reorganization and the rejection of such contracts where they are burdensome, the rejection will aid in consideration of the equities of each case. On the last point, "[e]quities in favor of the city in chapter 9 will be far more compelling than the equities in favor of the employer in chapter 11. Onerous employment obligations may prevent a city from balancing its budget for some time. The prospect of an unbalanced budget may preclude judicial confirmation of the plan. Unless a city can reject its labor contracts, lack of funds may force cutbacks in police, fire, sanitation, and welfare services, imposing hardships on many citizens. In addition, because cities in the past have often seemed immune to the constraint of 'profitability' faced by private businesses, their wage contracts may be relatively more onerous than those in the private sector." *Executory Contracts and Municipal Bankruptcy*, 85 Yale L.J. 957, 965 (1976) (footnote omitted). Rejection of the contracts may require the municipalities to renegotiate such

contracts by state collective bargaining laws. It is intended that the power to reject collective bargaining agreements will pre-empt state termination provisions, but not state collective bargaining laws. Thus, a city would not be required to maintain existing employment terms during the renegotiation period.

Legislative Statements. Section 926 of the House amendment is derived from section 928 of the Senate bill. The provision enables creditors to request the court to appoint a trustee to pursue avoiding powers if the debtor refuses to exercise those powers. Section 901 of the House amendment makes a corresponding change to incorporate avoiding powers included in the Senate amendment, but excluded from the House bill.

Effective Date of 1988 Amendment; Application of Amendments. Amendment by Pub.L. 100-597 effective on Nov. 3, 1988, and not applicable to cases commenced under this title prior to such date, see section 12 of Pub.L. 100-597, set out as a note under section 101 of this title.

Cross References

Appointment of trustee in

Chapter 13 cases, see section 1302.

Railroad reorganization cases, see section 1163.

Reorganization cases, see section 1104.

Trustee defined when used in sections made applicable to cases under this chapter, see section 902.

Library References:

C.J.S. Bankruptcy §§ 361-367.

West's Key No. Digests, Bankruptcy ☞3481.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 927. Limitation on recourse

The holder of a claim payable solely from special revenues of the debtor under applicable nonbankruptcy law shall not be treated as having recourse against the debtor on account of such claim pursuant to section 1111(b) of this title.

Added Pub.L. 100-597, § 7(2), Nov. 3, 1988, 102 Stat. 3029.

Historical and Revision Notes

Effective Date; Application of Amendments. Enactment by Pub.L. 100-597 effective on Nov. 3, 1988, and not applicable to

cases commenced under this title prior to such date, see section 12 of Pub.L. 100-597, set out as a note under section 101 of this title.

Library References:

C.J.S. Bankruptcy §§ 361-367.
West's Key No. Digests, Bankruptcy Ⓒ3481.

§ 928. Post petition effect of security interest

(a) Notwithstanding section 552(a) of this title and subject to subsection (b) of this section, special revenues acquired by the debtor after the commencement of the case shall remain subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.

(b) Any such lien on special revenues, other than municipal betterment assessments, derived from a project or system shall be subject to the necessary operating expenses of such project or system, as the case may be.

Added Pub.L. 100-597, § 8, Nov. 3, 1988, 102 Stat. 3029.

Historical and Revision Notes

Effective Date; Application of Amendments. Enactment by Pub.L. 100-597 effective on Nov. 3, 1988, and not applicable to

cases commenced under this title prior to such date, see section 12 of Pub.L. 100-597, set out as a note under section 101 of this title.

Library References:

C.J.S. Bankruptcy §§ 361-367.
West's Key No. Digests, Bankruptcy Ⓒ3481.

§ 929. Municipal leases

A lease to a municipality shall not be treated as an executory contract or unexpired lease for the purposes of section 365 or 502(b)(6) of this title solely by reason of its being subject to termination in the event the debtor fails to appropriate rent.

Added Pub.L. 100-597, § 9, Nov. 3, 1988, 102 Stat. 3030.

Historical and Revision Notes

Effective Date; Application of Amendments. Enactment by Pub.L. 100-597 effective on Nov. 3, 1988, and not applicable to

cases commenced under this title prior to such date, see section 12 of Pub.L. 100-597, set out as a note under section 101 of this title.

Library References:

C.J.S. Bankruptcy §§ 361-367.
West's Key No. Digests, Bankruptcy Ⓒ3481.

§ 930. Dismissal

(a) After notice and a hearing, the court may dismiss a case under this chapter for cause, including—

- (1) want of prosecution;
- (2) unreasonable delay by the debtor that is prejudicial to creditors;
- (3) failure to propose a plan within the time fixed under section 941 of this title;

(4) if a plan is not accepted within any time fixed by the court;

(5) denial of confirmation of a plan under section 943(b) of this title and denial of additional time for filing another plan or a modification of a plan; or

(6) if the court has retained jurisdiction after confirmation of a plan—

(A) material default by the debtor with respect to a term of such plan; or

(B) termination of such plan by reason of the occurrence of a condition specified in such plan.

(b) The court shall dismiss a case under this chapter if confirmation of a plan under this chapter is refused.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2623, formerly § 927; Pub.L. 98-353, Title III, § 496, July 10, 1984, 98 Stat. 384; renumbered § 930, Pub.L. 100-597, § 7(1), Nov. 3, 1988, 102 Stat. 3029.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 927 conforms to section 98 [former section 418 of this title] of current law. The Section permits dismissal by the court for unreasonable delay by the debtor, failure to propose a plan, failure of acceptance of a plan, or default by the debtor under a conformed plan. Mandatory dismissal is required if confirmation is refused.

Legislative Statements. Section 927(b) of the House amendment is derived from section 927(b) of the Senate bill. The provision requires mandatory dismissal if confirmation of a plan is refused.

The House amendment deletes section 929 of the Senate amendment as unnecessary since the bankruptcy court has original exclusive jurisdiction of all cases under chapter 9.

The House amendment deletes section 930 of the Senate amendment and incorporates section 507(a)(1) by reference.

Effective Date of 1988 Amendment: Application of Amendments. Amendment by Pub.L. 100-597 effective on Nov. 3, 1988, and not applicable to cases commenced under this title prior to such date, see section 12 of Pub.L. 100-597, set out as a note under section 101 of this title.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Conversion or dismissal of

Chapter 11 cases, see section 1112.

Chapter 13 cases, see section 1307.

Dismissal of chapter 7 cases, see section 707.

Effect of dismissal, see section 349.

Library References:

C.J.S. Bankruptcy § 365.

West's Key No. Digests. Bankruptcy Ⓒ3481.

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See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

SUBCHAPTER III—THE PLAN

§ 941. Filing of plan

The debtor shall file a plan for the adjustment of the debtor's debts. If such a plan is not filed with the petition, the debtor shall file such a plan at such later time as the court fixes.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2624.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 941 gives the debtor the exclusive right to propose a plan, and directs that the debtor propose one

either with the petition or within such time as the court directs. The section follows section 90(a) of current law [former section 410(a) of this title].

Cross References

Dismissal for failure to timely propose plan, see section 927.

Filing of plan in chapter 13 cases, see section 1321.

Who may file a plan in chapter 11 cases, see section 1121.

Library References:

C.J.S. Bankruptcy § 366.

West's Key No. Digests, Bankruptcy ☞3481.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 942. Modification of plan

The debtor may modify the plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of this chapter. After the debtor files a modification, the plan as modified becomes the plan.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2624.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 942 permits the debtor to modify the plan at any time before confirmation, as does section 90(a) of current law [former section 410(a) of this title].

Legislative Statements. The House amendment deletes section 942 of the Senate

amendment in favor of incorporating section 1125 by cross-reference. Similarly, the House amendment does not incorporate sections 944 or 945 of the Senate amendment since incorporation of several sections in chapter 11 in section 901 is sufficient.

Cross References

Modification of plan after confirmation in chapter 13 cases, see section 1329.

Modification of plan before confirmation in chapter 13 cases, see section 1323.

Modification of plan in chapter 11 cases, see section 1127.

Library References:

C.J.S. Bankruptcy § 366.

West's Key No. Digests, Bankruptcy ☞3481.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 943. Confirmation

- (a) A special tax payer may object to confirmation of a plan.
- (b) The court shall confirm the plan if—
 - (1) the plan complies with the provisions of this title made applicable by sections 103(e) and 901 of this title;
 - (2) the plan complies with the provisions of this chapter;
 - (3) all amounts to be paid by the debtor or by any person for services or expenses in the case or incident to the plan have been fully disclosed and are reasonable;
 - (4) the debtor is not prohibited by law from taking any action necessary to carry out the plan;
 - (5) except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that on the effective date of the plan each holder of a claim of a kind specified in section 507(a)(1) of this title will receive on account of such claim cash equal to the allowed amount of such claim;
 - (6) any regulatory or electoral approval necessary under applicable non-bankruptcy law in order to carry out any provision of the plan has been obtained, or such provision is expressly conditioned on such approval; and
 - (7) the plan is in the best interests of creditors and is feasible.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2624; Pub.L. 98-353, Title III, § 497, July 10, 1984, 98 Stat. 384; Pub.L. 100-597, § 10, Nov. 3, 1988, 102 Stat. 3030.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 946 [now this section] is adopted from current section 94 [former section 414 of this title]. The test for confirmation is whether or not the plan is fair and equitable and feasible. The fair and equitable test tracts current chapter X [former section 501 et seq. of this title] and is known as the strict priority rule. Creditors must be provided, under the plan, the going concern value of their claims. The going concern value contemplates a “comparison of revenues and expenditures taking into account the taxing power and the extent to which tax increases are both necessary and feasible” Municipal Insolvency, *supra*, at p. 64, and is intended to provide more of a return to creditors than the liquidation value if the city’s assets could be liquidated like those of a private corporation.

Notes of Committee on the Judiciary, House Report No. 95-595. In addition to the confirmation requirements incorporated

from section 1129 by section 901, this section specifies additional requirements. Paragraph (1) requires compliance with the provisions of the title made applicable in chapter 9 cases. This provision follows section 94(b)(2) [former section 414(b)(2) of this title]. Paragraph (2) requires compliance with the provisions of chapter 9, as does section 94(b)(2) [former section 414(b)(2) of this title]. Paragraph (3) adopts section 94(b)(4) [former section 414(b)(4) of this title], requiring disclosure and reasonableness of all payments to be made in connection with the plan or the case. Paragraph (4), copied from section 92(b)(6) [former section 414(b)(6) of this title], requires that the debtor not be prohibited by law from taking any action necessary to carry out the plan. Paragraph (5) departs from current law by requiring that administrative expenses be paid in full, but not necessarily in cash. Finally, paragraph (6) requires that the plan be in the

best interest of creditors and feasible. The best interest test was deleted in section 94(b)(1) of current chapter IX [former section 414(b)(1) of this title] from previous chapter IX [former section 401 et seq. of this title], because it was redundant with the fair and equitable rule. However, this bill proposes a new confirmation standard generally for reorganization, one element of which is the best interest of creditors test; see section 1129(a)(7). In that section, the test is phrased in terms of liquidation of the debtor. Because that is not possible in a municipal case, the test here is phrased in its more traditional form, using the words of art "best interest of creditors." The best interest of creditors test here is in addition to the financial standards imposed on the plan by section 1129(a)(8) and 1129(b), just as those provisions are in addition to the comparable best interest test in chapter 11, 11 U.S.C. 1129(a)(7). The feasibility requirement, added in the revision of chapter IX [former section 401 et seq. of this title] last year, is retained.

Legislative Statements. Section 943(a) of the House amendment makes clear that a special taxpayer may object to confirmation of a plan. Section 943(b) of the House amendment is derived from section 943 of the House bill respecting confirmation of a plan under chapter 9. It must be emphasized that these standards of confirmation are in addition to standards in section 1129 that are made applicable to chapter 9 by section 901 of the House amendment. In particular, if the requirements of section 1129(a)(8) are not complied with, then the proponent may request application of section 1129(b). The court will then be required to confirm the plan if it complies with the "fair and equitable" test and is in the best interests of creditors. The best interests of creditors test does not mean liquidation value as under chapter XI of the Bankruptcy Act [former section 701 et seq. of this title]. In

making such a determination, it is expected that the court will be guided by standards set forth in *Kelley v. Everglades Drainage District*, 319 U.S. 415 (1943) [Fla.1943, 63 S.Ct. 1141, 87 L.Ed. 1485, rehearing denied 63 S.Ct. 1444, 320 U.S. 214, 87 L.Ed. 1851, motion denied 64 S.Ct. 783, 321 U.S. 754, 88 L.Ed. 1054] and *Fano v. Newport Heights Irrigation Dist.*, 114 F.2d 563 (9th Cir.1940), as under present law, the bankruptcy court should make findings as detailed as possible to support a conclusion that this test has been met. However, it must be emphasized that unlike current law, the fair and equitable test under section 1129(b) will not apply if section 1129(a)(8) has been satisfied in addition to the other confirmation standards specified in section 943 and incorporated by reference in section 901 of the House amendment. To the extent that *American United Mutual Life Insurance Co. v. City of Avon Park*, 311 U.S. 138 (1940) [Fla.1940, 61 S.Ct. 157, 85 L.Ed. 91, 136 A.L.R. 860, rehearing denied 61 S.Ct. 395, 311 U.S. 730, 85 L.Ed. 475] and other cases are to the contrary, such cases are overruled to that extent.

Effective Date of 1988 Amendment; Application of Amendments. Amendment by Pub.L. 100-597 effective on Nov. 3, 1988, and not applicable to cases commenced under this title prior to such date, see section 12 of Pub.L. 100-597, set out as a note under section 101 of this title.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Confirmation hearing in

Chapter 11 cases, see section 1128.

Chapter 13 cases, see section 1324.

Confirmation of plan in

Chapter 13 cases, see section 1325.

Railroad reorganization cases, see section 1173.

Reorganization cases, see section 1129.

Dismissal for denial of confirmation of plan, see section 927.

Unclaimed property, see section 347.

Library References:

C.J.S. Bankruptcy § 367.

West's Key No. Digests, Bankruptcy Ⓒ3481.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 944. Effect of confirmation

(a) The provisions of a confirmed plan bind the debtor and any creditor, whether or not—

(1) a proof of such creditor's claim is filed or deemed filed under section 501 of this title;

(2) such claim is allowed under section 502 of this title; or

(3) such creditor has accepted the plan.

(b) Except as provided in subsection (c) of this section, the debtor is discharged from all debts as of the time when—

(1) the plan is confirmed;

(2) the debtor deposits any consideration to be distributed under the plan with a disbursing agent appointed by the court; and

(3) the court has determined—

(A) that any security so deposited will constitute, after distribution, a valid legal obligation of the debtor; and

(B) that any provision made to pay or secure payment of such obligation is valid.

(c) The debtor is not discharged under subsection (b) of this section from any debt—

(1) excepted from discharge by the plan or order confirming the plan; or

(2) owed to an entity that, before confirmation of the plan, had neither notice nor actual knowledge of the case.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2624.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) makes the provisions of a confirmed plan binding on the debtor and creditors. It is derived from section 95(a) of chapter 9 [former section 415(a) of this title].

Subsections (b) and (c) provide for the discharge of a municipality. The discharge is essentially the same as that granted under section 95(b) of the Bankruptcy Act [former section 415(b) of this title].

Cross References

Discharge in

Chapter 7 cases, see section 727.

Chapter 13 cases, see section 1328.

Effect of confirmation in

Chapter 11 cases, see section 1141.

Chapter 13 cases, see section 1327.

Effect of discharge, see section 524.

Exceptions to discharge, see section 523.

Library References:

C.J.S. Bankruptcy § 367.

West's Key No. Digests, Bankruptcy ⇨3481.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 945. Continuing jurisdiction and closing of the case

(a) The court may retain jurisdiction over the case for such period of time as is necessary for the successful implementation of the plan.

(b) Except as provided in subsection (a) of this section, the court shall close the case when administration of the case has been completed.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2625; Pub.L. 98-353, Title III, § 498, July 10, 1984, 98 Stat. 384.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 948 [now this section] permits the court to retain jurisdiction over the case to ensure successful execution of the plan. The provision is the same as that found in section 96(e) of Chapter 9 of the present Act [former section 416(e) of this title].

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III,

July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Closing and reopening cases, see section 350.

Library References:

C.J.S. Bankruptcy §§ 361-367.

West's Key No. Digests, Bankruptcy ⇨3481.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 946. Effect of exchange of securities before the date of the filing of the petition

The exchange of a new security under the plan for a claim covered by the plan, whether such exchange occurred before or after the date of the filing of the petition, does not limit or impair the effectiveness of the plan or of any provision of this chapter. The amount and number specified in section 1126(c) of this title include the amount and number of claims formerly held by a creditor that has participated in any such exchange.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2625.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section, which follows section 97 of current law [former section 417 of this title], permits an exchange of a security before the case is filed to consti-

tute an acceptance of the plan if the exchange was under a proposal that later becomes the plan.

Legislative Statements. The House amendment deletes section 950 of the Senate

amendment as unnecessary. The constitutionality of chapter 9 of the House amendment is beyond doubt.

Library References:

C.J.S. Bankruptcy §§ 361-367.

West's Key No. Digests, Bankruptcy Ⓒ3481.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

CHAPTER 11—REORGANIZATION

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- 1173. Confirmation of plan.
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Historical and Revision Notes

Legislative Statements. Chapter 11 of the House amendment is derived in large part from chapter 11 as contained in the House bill. Unlike chapter 11 of the Senate amendment, chapter 11 of the House amendment does not represent an extension of chapter X of current law [former section 501 et seq. of this title] or any other chapter of the Bankruptcy Act. Rather chapter 11 of the House amendment takes a new approach consolidating subjects dealt with under chapters VIII, X, XI, and XII of the Bankruptcy Act [former sections 201 et seq., 501 et seq., 701 et seq. and 801 et seq. of this title, respectively]. The new consolidated chapter 11 contains no special procedure for companies with public debt or equity security holders. Instead, factors such as the standard to be applied to solicitation of acceptances of a plan of reorganization are left to be determined by the court on a case-by-case basis. In order to insure that adequate investigation of the debtor is conducted to determine fraud or wrongdoing on the part of present management, an examiner is required to be appointed in all cases in which the debtor's fixed, liquidated, and unsecured debts, other than debts for goods, services, or taxes, or owing to an insider, exceed \$5 million. This should adequately represent the needs of public security holders in most cases. However, in addition, section 1109 of the House amendment enables both the Securities and Exchange Commission and any party in interest who is creditor, equity security holder, indenture trustee, or any committee representing creditors or equity security holders to raise and appear and be heard on any issue in a case under chapter 11. This will enable the bankruptcy court to evaluate all sides of a position and to determine the public interest. This approach is sharply contrasted to that under chapter X of present law in which the public interest is often determined only in terms of the interest of public security holders. The advisory role of the Securities and Exchange Commission will enable the court to balance the needs of public security holders against equally important public needs relating to the economy, such as employment

and production, and other factors such as the public health and safety of the people or protection of the national interest. In this context, the new chapter 11 deletes archaic rules contained in certain chapters of present law such as the requirement of an approval hearing and the prohibition of perpetration solicitation. Such requirements were written in an age before the enactment of the Trust Indenture Act [section 77aaa et seq. of Title 15, Commerce and Trade] and the development of securities laws had occurred. The benefits of these provisions have long been outlived but the detriment of the provisions served to frustrate and delay effective reorganization in those chapters of the Bankruptcy Act in which such provisions applied. Chapter 11 thus represents a much needed revision of reorganization laws. A brief discussion of the history of this important achievement is useful to an appreciation of the monumental reform embraced in chapter 11.

Under the existing Bankruptcy Act, debtors seeking reorganization may choose among three reorganization chapters, chapter X [former section 501 et seq. of this title], chapter XI [former section 701 et seq. of this title], and chapter XII [former section 801 et seq. of this title]. Individuals and partnerships may file under chapter XI or, if they own property encumbered by mortgage liens, they may file under chapter XII. A corporation may file under either chapter X or chapter XI, but is ineligible to file under chapter XII. Chapter X was designed to facilitate the pervasive reorganization of corporations whose creditors include holders of publicly issued debt securities. Chapter XI, on the other hand, was designed to permit smaller enterprises to negotiate composition or extension plans with their unsecured creditors. The essential differences between chapters X and XI are as follows. Chapter X mandates that, first, an independent trustee be appointed and assume management control from the officers and directors of the debtor corporation; second, the Securities and Exchange Commission must be afforded an opportunity to participate both as an adviser to the court and as a representative of the interests of public security holders; third, the court

must approve any proposed plan of reorganization, and prior to such approval, acceptances of creditors and shareholders may not be solicited; fourth, the court must apply the absolute priority rule; and fifth, the court has the power to affect, and grant the debtor a discharge in respect of, all types of claims, whether secured or unsecured and whether arising by reason of fraud or breach of contract.

The Senate amendment consolidates chapters X [former section 501 et seq. of this title], XI [former section 701 et seq. of this title], and XII [former section 801 et seq. of this title], but establishes a separate and distinct reorganization procedure for "public companies." The special provisions applicable to "public companies" are tantamount to the codification of chapter X of the existing Bankruptcy Act and thus result in the creation of a "two-track system." The narrow definition of the term "public company" would require many businesses which could have been rehabilitated under chapter XI to instead use the more cumbersome procedures of chapter X, whether needed or not.

The special provisions of the Senate amendment applicable to a "public company" are as follows:

(a) Section 1101(3) defines a "public company" as a debtor who, within 12 months prior to the filing of the petition had outstanding \$5 million or more in debt and had not less than 1000 security holders;

(b) Section 1104(a) requires the appointment of a disinterested trustee irrespective of whether creditors support such appointment and whether there is cause for such appointment;

(c) Section 1125(f) prohibits the solicitation of acceptances of a plan of reorganization prior to court approval of such plan even though the solicitation complies with all applicable securities laws;

(d) Section 1128(a) requires the court to conduct a hearing on any plan of reorganization proposed by the trustee or any other party;

(e) Section 1128(b) requires the court to refer any plans "worthy of consideration" to the Securities and Exchange Commission for their examination and report, prior to court approval of a plan; and

(f) Section 1128(c) and section 1130(a)(7) requires the court to approve a plan or plans

which are "fair and equitable" and comply with the other provisions of chapter 11.

The record of the Senate hearings on S. 2266 and the House hearings on H.R. 8200 is replete with evidence of the failure of the reorganization provisions of the existing Bankruptcy Act to meet the needs of insolvent corporations in today's business environment. Chapter X [former section 501 et seq. of this title] was designed to impose rigid and formalized procedures upon the reorganization of corporations and, although designed to protect public creditors, has often worked to the detriment of such creditors. As the House report has noted:

The negative results under chapter X [former section 501 et seq. of this title] have resulted from the stilted procedures, under which management is always ousted and replaced by an independent trustee, the courts and the Securities and Exchange Commission examine the plan of reorganization in great detail, no matter how long that takes, and the court values the business, a time consuming and inherently uncertain procedure.

The House amendment deletes the "public company" exception, because it would codify the well recognized infirmities of chapter X [former section 501 et seq. of this title], because it would extend the chapter X approach to a large number of new cases without regard to whether the rigid and formalized procedures of chapter X are needed, and because it is predicated upon the myth that provisions similar to those contained in chapter X are necessary for the protection of public investors. Bankruptcy practice in large reorganization cases has also changed substantially in the 40 years since the Chandler Act [the 1938 amendment of the Bankruptcy Act] was enacted. This change is, in large part, attributable to the pervasive effect of the Federal Securities laws and the extraordinary success of the Securities and Exchange Commission in sensitizing both management and members of the bar to the need for full disclosure and fair dealing in transactions involving publicly held securities.

It is important to note that Congress passed the Chandler Act [the 1938 amendment of the Bankruptcy Act] prior to enactment of the Trust Indenture Act of 1939 [section 77aaa et seq. of Title 15, Commerce and Trade] and prior to the definition and enforcement of the disclosure requirements of the Securities Act of 1933 [section 77(a) et seq. of Title 15] and the Securities Exchange Act of 1934 [section 78a et seq. of Title 15]. The judgments made by the 75th Congress in enacting the Chandler Act

are not equally applicable to the financial markets of 1978. First of all, most public debenture holders are neither weak nor unsophisticated investors. In most cases, a significant portion of the holders of publicly issued debentures are sophisticated institutions, acting for their own account or as trustees for investment funds, pension funds, or private trusts. In addition, debenture holders, sophisticated, and unsophisticated alike, are represented by indenture trustees, qualified under section 77ggg of the Trust Indenture Act [section 77ggg of Title 15, Commerce and Trade]. Given the high standard of care to which indenture trustees are bound, they are invariably active and sophisticated participants in efforts to rehabilitate corporate debtors in distress.

It is also important to note that in 1938 when the Chandler Act was enacted, public investors commonly held senior, not subordinated, debentures and corporations were very often privately owned. In this environment, the absolute priority rule protected debenture holders from an erosion of their position in favor of equity holders. Today, however, if there are public security holders in a case, they are likely to be holders of subordinated debentures and equity and thus the application of the absolute priority rule under chapter X [former section 501 et seq. of this title] leads to the exclusion, rather than the protection, of the public.

The primary problem posed by chapter X [former section 501 et seq. of this title] is delay. The modern corporation is a complex and multifaceted entity. Most corporations do not have a significant market share of the lines of business in which they compete. The success, and even the survival, of a corporation in contemporary markets depends on three elements: First, the ability to attract and hold skilled management; second, the ability to obtain credit; and third, the corporation's ability to project to the public an image of vitality. Over and over again, it is demonstrated that corporations which must avail themselves of the provisions of the Bankruptcy Act suffer appreciable deterioration if they are caught in a chapter X proceeding for any substantial period of time.

There are exceptions to this rule. For example, King Resources filed a chapter X [former section 501 et seq. of this title] petition in the District of Colorado and it emerged from such proceeding as a solvent corporation. The debtor's new found solvency was not, however, so much attributable to a brilliant rehabilitation

program conceived by a trustee, but rather to a substantial appreciation in the value of the debtor's oil and uranium properties during the pendency of the proceedings.

Likewise, Equity Funding is always cited as an example of a successful chapter X [former section 501 et seq. of this title] case. But it should be noted that in Equity Funding there was no question about retaining existing management. Rather, Equity Funding involved fraud on a grand scale. Under the House amendment with the deletion of the mandatory appointment of a trustee in cases involving "public companies," a bankruptcy judge, in a case like Equity Funding, would presumably have little difficulty in concluding that a trustee should be appointed under section 1104(6).

While I will not undertake to list the chapter X [former section 501 et seq. of this title] failures, it is important to note a number of cases involving corporations which would be "public companies" under the Senate amendment which have successfully skirted the shoals of chapter X and confirmed plans of arrangement in chapter XI [former section 701 et seq. of this title]. Among these are Daylin, Inc. ("Daylin") and Colwell Mortgage Investors ("Colwell").

Daylin filed a chapter XI [former section 701 et seq. of this title] petition on February 26, 1975, and confirmed its plan of arrangement on October 20, 1976. The success of its turnaround is best evidenced by the fact that it had consolidated net income of \$6,473,000 for the first three quarters of the 1978 fiscal year.

Perhaps the best example of the contrast between chapter XI [former section 701 et seq. of this title] and chapter X [former section 501 et seq. of this title] is the recent case of *In Re Colwell Mortgage Investors*. Colwell negotiated a recapitalization plan with its institutional creditors, filed a proxy statement with the Securities and Exchange Commission, and solicited consents of its creditors and shareholders prior to filing its chapter XI petition. Thereafter, Colwell confirmed its plan of arrangement 41 days after filing its chapter XI petition. This result would have been impossible under the Senate amendment since Colwell would have been a "public company."

There are a number of other corporations with publicly held debt which have successfully reorganized under chapter XI [former section 701 et seq. of this title]. Among these are National Mortgage Fund (NMF), which filed a chapter XI petition in the northern district of

Ohio on June 30, 1976. Prior to commencement of the chapter XI proceeding, NMF filed a proxy statement with the Securities and Exchange Commission and solicited acceptances to a proposed plan of arrangement. The NMF plan was subsequently confirmed on December 14, 1976. The Securities and Exchange Commission did not file a motion under section 328 of the Bankruptcy Act [former section 728 of this title] to transfer the case to chapter X [former section 501 et seq. of this title] and a transfer motion which was filed by private parties was denied by the court.

While there are other examples of large publicly held companies which have successfully reorganized in chapter XI [former section 701 et seq. of this title], including Esgrow, Inc. (C.D.Cal. 73-02510), Sherwood Diversified Services Inc. (S.D.N.Y. 73-B-213), and United Merchants and Manufacturers, Inc. (S.D.N.Y. 77-B-1513), the numerous successful chapter XI cases demonstrate two points: first, the complicated and time-consuming provisions of chapter X [former section 501 et seq. of this title] are not always necessary for the successful reorganization of a company with publicly held debt, and second, the more flexible provisions in chapter XI permit a debtor to obtain relief under the Bankruptcy Act in significantly less time than is required to confirm a plan of reorganization under chapter X of the Bankruptcy Act.

One cannot overemphasize the advantages of speed and simplicity to both creditors and debtors. Chapter XI [former section 701 et seq. of this title] allows a debtor to negotiate a plan outside of court and, having reached a settlement with a majority in number and amount of each class of creditors, permits the debtor to bind all unsecured creditors to the terms of the arrangement. From the perspective of creditors, early confirmation of a plan of arrangement: first, generally reduces administrative expenses which have priority over the claims of unsecured creditors; second, permits creditors to receive prompt distributions on their claims with respect to which interest does not accrue after the filing date; and third, increases the ultimate recovery on creditor claims by minimizing the adverse effect on the business which often accompanies efforts to operate an enterprise under the protection of the Bankruptcy Act.

Although chapter XI [former section 701 et seq. of this title] offers the corporate debtor flexibility and continuity of management, successful rehabilitation under chapter XI is often

impossible for a number of reasons. First, chapter XI does not permit a debtor to "affect" secured creditors or shareholders, in the absence of their consent. Second, whereas a debtor corporation in chapter X [former section 501 et seq. of this title], upon the consummation of the plan or reorganization, is discharged from all its debts and liabilities, a corporation in chapter XI may not be able to get a discharge in respect of certain kinds of claims including fraud claims, even in cases where the debtor is being operated under new management. The language of chapter 11 in the House amendment solves these problems and thus increases the utility and flexibility of the new chapter 11, as compared to chapter XI of the existing Bankruptcy Act.

Those who would urge the adoption of a two-track system have two major obstacles to meet. First, the practical experience of those involved in business rehabilitation cases, practitioners, debtors, and bankruptcy judges, has been that the more simple and expeditious procedures of chapter XI [former section 701 et seq. of this title] are appropriate in the great majority of cases. While attempts have been made to convince the courts that a chapter X [former section 501 et seq. of this title] proceeding is required in every case where public debt is present, the courts have categorically rejected such arguments. Second, chapter X has been far from a success. Of the 991 chapter X cases filed during the period of January 1, 1967, through December 31, 1977, only 664 have been terminated. Of those cases recorded as "terminated," only 140 resulted in consummated plans. This 21 percent success rate suggests one of the reasons for the unpopularity of chapter X.

In summary, it has been the experience of the great majority of those who have testified before the Senate and House subcommittees that a consolidated approach to business rehabilitation is warranted. Such approach is adopted in the House amendment.

Having discussed the general reasons why chapter 11 of the House amendment is sorely needed, a brief discussion of the differences between the House bill, Senate amendment, and the House amendment is in order. Since chapter 11 of the House amendment rejects the concept of separate treatment for a public company, sections 1101(3), 1104(a), 1125(f), 1128, and 1130(a)(7) of the Senate amendment have been deleted.

Effective Date of 1984 Amendments. Items 1113 and 1142 added by Pub.L. 98-353. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Allowance of administrative expenses of substantial contributors to cases under this chapter, see section 503.

Chapters 1, 3, and 5 of this title applicable in cases under this chapter except as provided in section 1161 of this title, see section 103.

Claims arising from rejection under chapter plans of executory contracts or unexpired leases, see section 502.

Commencement of involuntary cases, see section 303.

Conversion to this chapter from

Chapter 7, see section 706.

Chapter 13, see section 1307.

Duration of automatic stay, see section 362.

Employment of professional persons, see section 327.

Executory contracts and unexpired leases, see section 365.

Limitation on compensation of trustee, see section 326.

Persons who may be debtors under this chapter, see section 109.

Property of estate in cases converted from chapter 13, see section 1306.

Return of excessive attorney compensation if transferred property was to be paid by debtor under plan under this chapter, see section 329.

Special tax provisions, see sections 346.

Stay of action against chapter 13 codebtor in cases converted to this chapter, see section 1301.

Unclaimed property, see section 347.

Use, sale or lease of property under plan under this chapter, see section 363.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

Cross References

Subchapter applicable only in case under this chapter except as provided in section 901, see section 103.

§ 1101. Definitions for this chapter

In this chapter—

(1) “debtor in possession” means debtor except when a person that has qualified under section 322 of this title is serving as trustee in the case;

(2) “substantial consummation” means—

(A) transfer of all or substantially all of the property proposed by the plan to be transferred;

(B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and

(C) commencement of distribution under the plan.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2626.

Historical and Revision Notes

Note of Committee on the Judiciary, Senate Report No. 95-989. This section contains definitions of three terms that are used in chapter 11. Paragraph (1) defines debtor in possession to mean the debtor, except when a trustee who has qualified in serving in the case.

Paragraph (2), derived from section 229a of current law [former section 629(a) of this title], defines substantial consummation. Substantial consummation of a plan occurs when transfer of all or substantially all of the property proposed by the plan to be transferred is actually transferred: when the debtor (or its successor) has assumed the business of the debtor or the management of all or substantially all of the property dealt with by the plan; and when distribution under the plan has commenced.

Paragraph (3) defines for purposes of Chapter 11 a public company to mean “a debtor who, within 12 months prior to the filing of a petition for relief under this chapter, had outstanding liabilities of \$5 million or more, exclusive of liabilities for goods, services, or taxes and not less than 1,000 security holders.” There are, as noted, special safeguards for public investors related to the reorganization of a public company, as so defined.

Both requirements must be met: (1) liabilities, excluding tax obligations and trade liabilities, must be \$5 million or more; and (2) the number of holders of securities, debt or equity, or both, must be not less than 1,000. The amount and number are to be determined as of any time within 12 months prior to the filing of the petition for reorganization.

Cross References

Definitions applicable in

Cases under this title, see section 101.

Chapter 9 cases, see section 902.

Commodity broker liquidation cases, see section 761.

Railroad reorganization cases, see section 1162.

Stockbroker liquidation cases, see section 741.

Library References:

C.J.S. Bankruptcy § 368 et seq.

West's Key No. Digests, Bankruptcy ☞3501-3627.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1102. Creditors' and equity security holders' committees

(a)(1) Except as provided in paragraph (3), as soon as practicable after the order for relief under chapter 11 of this title, the United States trustee shall appoint a committee of creditors holding unsecured claims and may appoint additional committees of creditors or of equity security holders as the United States trustee deems appropriate.

(2) On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. The United States trustee shall appoint any such committee.

(3) On request of a party in interest in a case in which the debtor is a small business and for cause, the court may order that a committee of creditors not be appointed.

(b)(1) A committee of creditors appointed under subsection (a) of this section shall ordinarily consist of the persons, willing to serve, that hold the seven largest claims against the debtor of the kinds represented on such committee, or of the members of a committee organized by creditors before the commencement of the case under this chapter, if such committee was fairly chosen and is representative of the different kinds of claims to be represented.

(2) A committee of equity security holders appointed under subsection (a)(2) of this section shall ordinarily consist of the persons, willing to serve, that hold the seven largest amounts of equity securities of the debtor of the kinds represented on such committee.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2626; Pub.L. 98-353, Title III, § 499, July 10, 1984, 98 Stat. 384; Pub.L. 99-554, Title II, § 221, Oct. 27, 1986, 100 Stat. 3101; Pub.L. 103-394, Title II, § 217(b), October 22, 1994, 108 Stat. 4127.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section provides for the election and appointment of committees. Subsection (c) provides that this section does not apply in case of a public company, as to which a trustee, appointed under section 1104(a) will have responsibility to administer the estate and to formulate a plan as provided in section 1106(a).

There is no need for the election or appointment of committees for which the appointment of a trustee is mandatory. In the case of a public company there are likely to be several committees, each representing a different class of security holders and seeking authority to retain accountants, lawyers, and other experts, who will expect to be paid. If in the case of a public company creditors or stockholders wish to organize committees, they may do so, as authorized under section 1109(a). Compensation and reimbursement will be allowed for contributions to the reorganization pursuant to section 503(b)(3) and (4).

Notes of Committee on the Judiciary, House Report No. 95-595. This section provides for the appointment of creditors' and equity security holders' committees, which will be the primary negotiating bodies for the formulation of the plan of reorganization. They will represent the various classes of creditors and equity security holders from which they are selected. They will also provide supervision of the debtor in possession and of the trustee, and will protect their constituents' interests.

Subsection (a) requires the court to appoint at least one committee. That committee is to be composed of creditors holding unsecured

claims. The court is authorized to appoint such additional committees as are necessary to assure adequate representation of creditors and equity security holders. The provision will be relied upon in cases in which the debtor proposes to affect several classes of debt or equity holders under the plan, and in which they need representation.

Subsection (b) contains precatory language directing the court to appoint the persons holding the seven largest claims against the debtor of the kinds represented on a creditors' committee, or the members of a prepetition committee organized by creditors before the order for relief under chapter 11. The court may continue prepetition committee members only if the committee was fairly chosen and is representative of the different kinds of claims to be represented. The court is restricted to the appointment of persons in order to exclude governmental holders of claims or interests.

Paragraph (2) of subsection (b) requires similar treatment for equity security holders' committees. The seven largest holders are normally to be appointed, but the language is only precatory.

Subsection (c) authorizes the court, on request of a party in interest, to change the size or the membership of a creditors' or equity security holders' committee if the membership of the committee is not representative of the different kinds of claims or interests to be represented. This subsection is intended, along with the nonbinding nature of subsection (b), to afford the court latitude in appointing a committee that is manageable and representative in light of the circumstances of the case.

Legislative Statements. Section 1102(a) of the House amendment adopts a compromise between the House bill and Senate amendment requiring appointment of a committee of creditors holding unsecured claims by the court; the alternative of creditor committee election is rejected.

Section 1102(b) of the House amendment represents a compromise between the House bill and the Senate amendment by preventing the appointment of creditors who are unwilling to serve on a creditors committee.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

1986 Amendment. Subsec. (a)(1). Pub.L. 99-554, § 221(1), substituted “under chapter 11 of this title, the United States trustee shall appoint” for “under this chapter, the court shall appoint” and added “and may appoint additional committees of creditors or of equity security holders as the United States trustee deems appropriate.” following “unsecured claims”.

Subsec. (a)(2). Pub.L. 99-554, § 221(1), substituted “The United States trustee shall appoint” for “The court shall appoint”.

Subsec. (c). Pub.L. 99-554, § 221(2), struck out subsec. (c) which read as follows: “On request of a party in interest and after notice and a hearing, the court may change the membership or the size of a committee appointed under subsection (a) of this section if the membership of such committee is not representative of the different kinds of claims or interests to be represented.”.

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or

Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 221, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 221, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 221, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the

election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 221, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not

applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Creditors' committees in chapter 7 cases, see section 705.

Disallowance of administrative expenses for creditors' and equity security holders' committees, see section 503.

Effect of conversion, see section 348.

Inapplicability of subsec. (a)(1) of this section to railroad reorganization cases, see section 1161.

Limitation on compensation of professional persons, see section 328.

Library References:

C.J.S. Bankruptcy §§ 193, 373.

West's Key No. Digests, Bankruptcy Ⓒ3024.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1103. Powers and duties of committees

(a) At a scheduled meeting of a committee appointed under section 1102 of this title, at which a majority of the members of such committee are present, and with the court's approval, such committee may select and authorize the employment by such committee of one or more attorneys, accountants, or other agents, to represent or perform services for such committee.

(b) An attorney or accountant employed to represent a committee appointed under section 1102 of this title may not, while employed by such committee, represent any other entity having an adverse interest in connection with the case. Representation of one or more creditors of the same class as represented by the committee shall not per se constitute the representation of an adverse interest.

(c) A committee appointed under section 1102 of this title may—

(1) consult with the trustee or debtor in possession concerning the administration of the case;

(2) investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;

(3) participate in the formulation of a plan, advise those represented by such committee of such committee's determinations as to any plan formulated, and collect and file with the court acceptances or rejections of a plan;

(4) request the appointment of a trustee or examiner under section 1104 of this title; and

(5) perform such other services as are in the interest of those represented.

(d) As soon as practicable after the appointment of a committee under section 1102 of this title, the trustee shall meet with such committee to transact such business as may be necessary and proper.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2627; Pub.L. 98-353, Title III, §§ 324, 500, July 10, 1984, 98 Stat. 358, 384.

Historical and Revision Notes

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Compensation of officers, see section 330.

Creditors' committees in chapter 7 cases, see section 705.

Interim compensation for professional persons, see section 331.

Limitation on compensation of professional persons, see section 328.

Library References:

C.J.S. Bankruptcy §§ 193, 373.

West's Key No. Digests, Bankruptcy Ⓒ3024.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1104. Appointment of trustee or examiner

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

(b) Except as provided in section 1163 of this title, on the request of a party in interest made not later than 30 days after the court orders the appointment of a trustee under subsection (a), the United States trustee shall convene a meeting of creditors for the purpose of electing one disinterested person to serve as trustee in the case. The election of a trustee shall be conducted in the manner provided in subsections (a), (b), and (c) of section 702 of this title.

(c) If the court does not order the appointment of a trustee under this section, then at any time before the confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of an examiner to conduct such an investigation of the debtor as is appropriate, including an investigation of any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor or by current or former management of the debtor, if—

(1) such appointment is in the interests of creditors, any equity security holders, and other interests of the estate; or

(2) the debtor's fixed, liquidated, unsecured debts, other than debts for goods, services, or taxes, or owing to an insider, exceed \$5,000,000.

(d) If the court orders the appointment of a trustee or an examiner, if a trustee or an examiner dies or resigns during the case or is removed under section 324 of this title, or if a trustee fails to qualify under section 322 of this title, then the United States trustee, after consultation with parties in interest, shall appoint, subject to the court's approval, one disinterested person other than the United States trustee to serve as trustee or examiner, as the case may be, in the case.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2627; Pub.L. 99-554, Title II, § 222, Oct. 27, 1986, 100 Stat. 3102; Pub.L. 103-394, Title II, § 211(a), Title V, § 501(d)(30), October 22, 1994, 108 Stat. 4125, 4146.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) provides for the mandatory appointment of a disinterested trustee in the case of a public company, as defined in section 1101(3), within 10 days of the order for relief, or of a successor, in the event of a vacancy, as soon as practicable.

Section 156 of chapter X (11 U.S.C. 516) [former section 516 of this title] requires the appointment of a disinterested trustee if the debtor's liabilities are \$250,000 or over. Section 1104(a) marks a substantial change. The appointment of a trustee is mandatory only for a public company, which under section 1101(3),

has \$5 million in liabilities, excluding tax and trade obligations, and 1,000 security holders. In view of past experience, cases involving public companies will under normal circumstances probably be relatively few in number but of vast importance in terms of public investor interest.

In case of a nonpublic company, the appointment or election of a trustee is discretionary if the interests of the estate and its security holders would be served thereby. A test based on probable costs and benefits of a trusteeship is not practical. The appointment may be made at any time prior to confirmation of the plan.

In case of a nonpublic company, if no trustee is appointed, the court may under subsection (c) appoint an examiner, if the appointment would serve the interests of the estate and security holders. The purpose of his appointment is specified in section 1106(b).

Notes of Committee on the Judiciary, House Report No. 95-595. Subsection (a) of this section governs the appointment of trustees in reorganization cases. The court is permitted to order the appointment of one trustee at any time after the commencement of the case if a party in interest so requests. The court may order appointment only if the protection afforded by a trustee is needed and the costs and expenses of a trustee would not be disproportionately higher than the value of the protection afforded.

The protection afforded by a trustee would be needed, for example, in cases where the current management of the debtor has been fraudulent or dishonest, or has grossly mismanaged the company, or where the debtor's management has abandoned the business. A trustee would not necessarily be needed to investigate misconduct of former management of the debtor, because an examiner appointed under this section might well be able to serve that function adequately without displacing the current management. Generally, a trustee would not be needed in any case where the protection afforded by a trustee could equally be afforded by an examiner. Though the device of examiner appears in current chapter X [former section 501 et seq. of this title], it is rarely used because of the nearly absolute presumption in favor of the appointment of a trustee. Its use here will give the courts, debtors, creditors, and equity security holders greater flexibility in handling the affairs of an insolvent debtor, permitting the court to tailor the remedy to the case.

The second test, relating to the costs and expenses of a trustee, is not intended to be a strict cost/benefit analysis. It is included to require the court to have due regard for any additional costs or expenses that the appointment of a trustee would impose on the estate.

Subsection (b) permits the court, at any time after the commencement of the case and on request of a party in interest, to order the appointment of an examiner, if the court has not ordered the appointment of a trustee. The examiner would be appointed to conduct such an investigation of the debtor as is appropriate under the particular circumstances of the case, including an investigation of any allegations of

fraud, dishonesty, or gross mismanagement of the debtor or by current or former management of the debtor. The standards for the appointment of an examiner are the same as those for the appointment of a trustee: the protection must be needed, and the costs and expenses must not be disproportionately high.

By virtue of proposed 11 U.S.C. 1109, an indenture trustee and the Securities and Exchange Commission will be parties in interest for the purpose of requesting the appointment of a trustee or examiner.

Subsection (c) directs that the United States trustee actually select and appoint the trustee or examiner ordered appointed under this section. The United States trustee is required to consult with various parties in interest before selecting and appointing a trustee. He is not bound to select one of the members of the panel of private trustees established under proposed 28 U.S.C. 586(a)(1) which exists only for the purpose of providing trustees for chapter 7 cases. Neither is he precluded from selecting a panel member if the member is qualified to serve as chapter 11 trustee. Appointment by the United States trustee will remove the court from the often criticized practice of appointing an officer that will appear in litigation before the court against an adverse party.

Legislative Statements. Section 1104 of the House amendment represents a compromise between the House bill and the Senate amendment concerning the appointment of a trustee or examiner. The method of appointment rather than election, is derived from the House bill; the two alternative standards of appointment are derived with modifications from the Senate amendment, instead of the standard stated in the House bill. For example, if the current management of the debtor gambled away rental income before the filing of the petition, a trustee should be appointed after the petition, whether or not postpetition mismanagement can be shown. However, under no circumstances will cause include the number of security holders of the debtor or the amount of assets or liabilities of the debtor. The standard also applies to the appointment of an examiner in those circumstances in which mandatory appointment, as previously detailed, is not required.

1994 Act. The amendment conforms selection of private trustees in chapter 11 cases to the selection process in chapter 7 cases, thereby allowing creditors in a chapter 11 case to elect their own trustee.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

1986 Amendment. Subsec. (a). Pub.L. 99-554, § 222(1), added "or the United States trustee" following "party in interest".

Subsec. (b). Pub.L. 99-554, § 222(2), added "or the United States trustee" following "party in interest".

Subsec. (c). Pub.L. 99-554, § 222(3), substituted "the United States trustee after consultation with parties in interest, shall appoint, subject to the court's approval, one disinterested person other than the United States trustee to serve" for "the court shall appoint one disinterested person to serve".

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Savings Provisions; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 222, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 222 not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 222, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 222, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a Unit-

ed States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L.

99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554 set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Cross References

Appointment of trustee in

Chapter 13 cases, see section 1302.

Railroad reorganization cases, see section 1163.

Election of trustee, see section 702.

Grant of damages to debtor proximately caused by trustee taking possession of debtor's property, see section 303.

Inapplicability of this section to

Railroad reorganization cases, see section 1161.

Qualification of trustee, see section 322.

Time for bringing action, see section 546.

Library References:

C.J.S. Bankruptcy § 375.

West's Key No. Digests, Bankruptcy ⇨3623.1-3626.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1105. Termination of trustee's appointment

At any time before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court may terminate the trustee's appointment and restore the debtor to possession and management of the property of the estate and of the operation of the debtor's business.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2628; Pub.L. 98-353, Title III, § 501, July 10, 1984, 98 Stat. 384; Pub.L. 99-554, Title II, § 223, Oct. 27, 1986, 100 Stat. 3102.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section authorizes the court to terminate the trustee's appointment and to restore the debtor to possession and management of the property of the estate and to operation of the debtor's business. Section 1104(a) provides that this section does not apply in the case of a public company, for which the appointment of a trustee is mandatory.

Notes of Committee on the Judiciary, House Report No. 95-595. This section authorizes the court to terminate the trustee's appointment and to restore the debtor to possession and management of the property of the estate, and to operation of the debtor's busi-

ness. This section would permit the court to reverse its decision to order the appointment of a trustee in light of new evidence.

1986 Amendment. Pub.L. 99-554, § 223, added "or the United States trustee" following "party in interest".

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in

Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 223, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 223, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 223, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of

Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 223, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Effect of vacancy in office of trustee, see section 325.

Inapplicability of this section to Railroad reorganization cases, see section 1161.

Removal of trustee, see section 324.

Library References:

C.J.S. Bankruptcy § 196.

West's Key No. Digests, Bankruptcy ⇌3007.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1106. Duties of trustee and examiner

(a) A trustee shall—

(1) perform the duties of a trustee specified in sections 704(2), 704(5), 704(7), 704(8), and 704(9) of this title;

(2) if the debtor has not done so, file the list, schedule, and statement required under section 521(1) of this title;

(3) except to the extent that the court orders otherwise, investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;

(4) as soon as practicable—

(A) file a statement of any investigation conducted under paragraph

(3) of this subsection, including any fact ascertained pertaining to fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor, or to a cause of action available to the estate; and

(B) transmit a copy or a summary of any such statement to any creditors' committee or equity security holders' committee, to any indenture trustee, and to such other entity as the court designates;

(5) as soon as practicable, file a plan under section 1121 of this title, file a report of why the trustee will not file a plan, or recommend conversion of the case to a case under chapter 7, 12, or 13 of this title or dismissal of the case;

(6) for any year for which the debtor has not filed a tax return required by law, furnish, without personal liability, such information as may be required by the governmental unit with which such tax return was to be filed, in light of the condition of the debtor's books and records and the availability of such information; and

(7) after confirmation of a plan, file such reports as are necessary or as the court orders.

(b) An examiner appointed under section 1104(d) of this title shall perform the duties specified in paragraphs (3) and (4) of subsection (a) of this section, and, except to the extent that the court orders otherwise, any other duties of the trustee that the court orders the debtor in possession not to perform.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2628; Pub.L. 98-353, Title III, §§ 311(b)(1), 502, July 10, 1984, 98 Stat. 355, 384; Pub.L. 99-554, Title II, § 257(c), Oct. 27, 1986, 100 Stat. 3114.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) of this section prescribes the trustee's duties. He is required to perform the duties of a trustee in a liquidation case specified in section 704(2), (4), (6), (7), (8), and (9). These include reporting and informational duties, and accountability for all property received. Paragraph (2) of this subsection requires the trustee to file with the court, if the debtor has not done so, the list of creditors, schedule of assets and liabilities, and statement of affairs required under section 521(1).

Paragraph (3) of S. 1106 requires the trustee to investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business, and the desirability of the continuance of the business, and any other matter relevant to the case or to the formulation of a plan. Paragraph (4) requires the trustee to report the results of his investigation to the court and to creditors' committees, equity security holders' committees, indenture trustees and any other entity the court designates.

Paragraph (5) requires the trustee to file a plan or to report why a plan cannot be formulated, or to recommend conversion to liquidation or to an individual repayment plan case, or dismissal. It is anticipated that the trustee will consult with creditors and other parties in interest in the formulation of a plan, just as the debtor in possession would.

Paragraph (6) [now (7)] requires final reports by the trustee, as the court orders.

Subsection (b) gives the trustee's investigative duties to an examiner, if one is appointed. The court is authorized to give the examiner additional duties as the circumstances warrant.

Paragraphs (3), (4), and (5) of subsection (a) are derived from sections 165 and 169 of chapter X (11 U.S.C. 565, 569) [former sections 565 and 569 of this title, respectively].

Effective Date of 1986 Amendments; Savings Provisions; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(c), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of

Pub.L. 99-554, set out as a note under section 581 of Title 28.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Payment of Benefits to Retired Former Employees; Covered Benefits and Employees; Payments, Procedures, Etc. Pub.L. 99-591, Title I, § 101(b) [Title VI, § 608], Oct. 30, 1986, 99 Stat. 3341-74, as amended Pub.L. 100-41, May 15, 1987, 101 Stat. 309; Pub.L. 100-99, Aug. 18, 1987, 101 Stat. 716; Pub.L. 100-334, § 3(a), June 16, 1988, 102 Stat. 613, provided that:

"(a)(1) Subject to paragraphs (2), (3), (4), and (5), and notwithstanding title 11 of the United States Code [this title] the trustee shall pay benefits to retired former employees under a plan, fund, or program maintained or established by the debtor prior to filing a petition (through the purchase of insurance or otherwise) for the purpose of providing medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death.

"(2) The level of benefits required to be paid by this subsection may be modified prior to confirmation of a plan under section 1129 of such title [section 1129 of this title] if—

"(A) the trustee and an authorized representative of the former employees with respect to whom such benefits are payable agree to the modification of such benefit payments; or

"(B) the court finds that a modification proposed by the trustee meets the standards of section 1113(b)(1)(A) of such title [section 1113(b)(1)(A) of this title] and the balance of the equities clearly favors the modification.

"If such benefits are covered by a collective bargaining agreement, the authorized representative shall be the labor organization that

is signatory to such collective bargaining agreement unless there is a conflict of interest.

“(3) The trustee shall pay benefits in accordance with this subsection until—

“(A) the dismissal of the case involved; or

“(B) the effective date of a plan confirmed under section 1129 of such title which provides for the continued payment after confirmation of the plan of all such benefits at the level established under paragraph (2) of this subsection, at any time prior to the confirmation of the plan, for the duration of the period the debtor (as defined in such title) has obligated itself to provide such benefits.

“(4) No such benefits paid between the filing of a petition in a case covered by this section and the time a plan confirmed under section 1129 of such title with respect to such case becomes effective shall be deducted or offset from the amount allowed as claims for any benefits which remain unpaid, or from the amount to be paid under the plan with respect to such claims for unpaid benefits, whether such claims for unpaid benefits are based upon or arise from a right to future benefits or from any benefit not paid as a result of modifications allowed pursuant to this section.

“(5) No claim for benefits covered by this section shall be limited by section 502(b)(7) of such title [section 502(b)(7) of this title].

“(b)(1) Notwithstanding any provision of title 11 of the United States Code [this title], the trustee shall pay an allowable claim of any person for a benefit paid—

“(A) before the filing of the petition under title 11 of the United States Code; and

“(B) directly or indirectly to a retired former employee under a plan, fund, or program described in subsection (a)(1);

if, as determined by the court, such person is entitled to recover from such employee, or any provider of health care to such employ-

ee, directly or indirectly, the amount of such benefit for which such person receives no payment from the debtor.

“(2) For purposes of paragraph (1), the term ‘provider of health care’ means a person who—

“(A) is the direct provider of health care (including a physician, dentist, nurse, podiatrist, optometrist, physician assistant, or ancillary personnel employed under the supervision of a physician); or

“(B) administers a facility or institution (including a hospital, alcohol and drug abuse treatment facility, outpatient facility, or health maintenance organization) in which health care is provided.

“(c) This section is effective with respect to cases commenced under chapter 11, of title 11, United States Code [this chapter], in which a plan for reorganization has not been confirmed by the court and in which any such benefit is still being paid on October 2, 1986, and in cases that become subject to chapter 11, title 11, United States Code, after October 2, 1986 and before the date of the enactment of the Retiree Benefits Bankruptcy Protection Act of 1988 [June 16, 1988].

“(d) This section shall not apply during any period in which a case is subject to chapter 7, title 11, United States Code [11 U.S.C.A. § 701 et seq.].”

[A similar provision to Pub.L. 99-591 but not amended by subsequent law was enacted by Pub.L. 99-500, Title I, § 101(b) [Title VI, § 608], Oct. 18, 1986, 100 Stat. 1783-74.]

Payment of Certain Benefits to Retired Former Employees. Pub.L. 99-656, § 2, Nov. 14, 1986, 100 Stat. 3668, as amended Pub.L. 100-41, May 15, 1987, 101 Stat. 309; Pub.L. 100-99, Aug. 18, 1987, 101 Stat. 716, which related to payment of benefits by bankruptcy trustee until Oct. 15, 1987, to retired former employees in enumerated instances, was repealed by Pub.L. 100-334, § 3(b), June 16, 1988, 102 Stat. 614.

Cross References

Additional duties of trustees in chapter 13 cases, see section 1302.

Library References:

C.J.S. Bankruptcy §§ 197, 376.

West's Key No. Digests, Bankruptcy Ⓒ3008.1, 3009, 3627.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1107. Rights, powers, and duties of debtor in possession

(a) Subject to any limitations on a trustee serving in a case under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all the functions and duties, except the duties specified in sections 1106(a)(2), (3), and (4) of this title, of a trustee serving in a case under this chapter.

(b) Notwithstanding section 327(a) of this title, a person is not disqualified for employment under section 327 of this title by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2628; Pub.L. 98-353, Title III, § 503, July 10, 1984, 98 Stat. 384.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section places a debtor in possession in the shoes of a trustee in every way. The debtor is given the rights and powers of a chapter 11 trustee. He is required to perform the functions and duties of a chapter 11 trustee (except the investigative duties). He is also subject to any limitations on a chapter 11 trustee, and to such other limitations and conditions as the court prescribes cf. *Wolf v. Weinstein*, 372 U.S. 633, 649-650 (1963).

Legislative Statements. The House amendment adopts section 1107(b) of the Senate amendment which clarifies a point not covered by the House bill.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Debtor engaged in business in chapter 13 cases, see section 1304.
Debtor's duties, see section 521.
Inapplicability of this section in railroad reorganization cases, see section 1161.
Limitation on compensation of professional persons, see section 328.
Rights and powers of debtor in chapter 13 cases, see section 1303.
Trustee's duties in chapter 7 cases, see section 704.

Library References:

C.J.S. Bankruptcy § 374.
West's Key No. Digests, Bankruptcy Ⓒ3622.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1108. Authorization to operate business

Unless the court, on request of a party in interest and after notice and a hearing, orders otherwise, the trustee may operate the debtor's business.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2629; Pub.L. 98-353, Title III, § 504, July 10, 1984, 98 Stat. 384.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section permits the debtor's business to continue to be operated, unless the court orders otherwise. Thus, in a reorganization case, operation of the business will be the rule, and it will not be necessary to go to the court to obtain an order authorizing operation.

Notes of Committee on the Judiciary, House Report No. 95-595. This section does not presume that a trustee will be appointed to operate the business of the debtor. Rather, the power granted to trustee under this section is one of the powers that a debtor in possession acquires by virtue of proposed 11 U.S.C. 1107.

Legislative Statements. The House amendment adopts section 1108 of the House bill in preference to the style of an identical

substantive provision contained in the Senate amendment. Throughout Title 11 references to a "trustee" is read to include other parties under various sections of the bill. For example, section 1107 applies to give the debtor in possession all the rights and powers of a trustee in a case under chapter 11; this includes the power of the trustee to operate the debtor's business under section 1108.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Authorization to operate business in chapter 7 cases, see section 721.
Executory contracts and unexpired leases, see section 365.
Executory contracts in stockbroker liquidation cases, see section 744.
Obtaining credit, see section 364.
Retention or replacement of professional persons, see section 327.
Treatment of accounts in
 Commodity broker liquidation cases, see section 763.
 Stockbroker liquidation cases, see section 745.
Use, sale or lease of property, see section 363.
Utility service, see section 366.

Library References:

C.J.S. Bankruptcy § 199.
West's Key No. Digests, Bankruptcy ⇨3025.1, 3026.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1109. Right to be heard

(a) The Securities and Exchange Commission may raise and may appear and be heard on any issue in a case under this chapter, but the Securities and Exchange Commission may not appeal from any judgment, order, or decree entered in the case.

(b) A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2629.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) provides, in unqualified terms, that any creditor, equity security holder, or an indenture trustee shall have the right to be heard as a party in interest under this chapter in person, by an attorney, or by a committee. It is derived from section 206 of chapter X (11 U.S.C. 606) [former section 606 of this title].

Subsection (b) provides that the Securities and Exchange Commission may appear by filing an appearance in a case of a public company and may appear in other cases if authorized or requested by the court. As a party in interest in either case, the Commission may raise and be heard on any issue. The Commission may not appeal from a judgment, order, or decree in a case, but may participate in any appeal by any other party in interest. This is the present law under section 208 of chapter X (11 U.S.C. 608) [former section 608 of this title].

Notes of Committee on the Judiciary, House Report No. 95-595. Section 1109 authorizes the Securities and Exchange Commission and any indenture trustee to intervene in the case at any time on any issue. They may raise an issue or may appear and be heard

on an issue that is raised by someone else. The section, following current law, denies the right of appeal to the Securities and Exchange Commission. It does not, however, prevent the Commission from joining or participating in an appeal taken by a true party in interest. The Commission is merely prevented from initiating the appeal in any capacity.

Legislative Statements. Section 1109 of the House amendment represents a compromise between comparable provisions in the House bill and Senate amendment. As previously discussed the section gives the Securities and Exchange Commission the right to appear and be heard and to raise any issue in a case under chapter 11; however, the Securities and Exchange Commission is not a party in interest and the Commission may not appeal from any judgment, order, or decree entered in the case. Under section 1109(b) a party in interest, including the debtor, the trustee, creditors committee, equity securities holders committee, a creditor, an equity security holder, or an indentured trustee, may raise and may appear and be heard on any issue in a case under chapter 11. Section 1109(c) of the Senate amendment has been moved to subchapter IV pertaining to Railroad Reorganizations.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Right of Commodity Futures Trading Commission to be heard, see section 762.

Right of Interstate Commerce Commission, Department of Transportation, and State or local regulatory commission to be heard in railroad reorganization, see section 1164.

Library References:

C.J.S. Bankruptcy § 38.

West's Key No. Digests, Bankruptcy ⇨2205, 2206.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1110. Aircraft equipment and vessels

(a)(1) Except as provided in paragraph (2) and subject to subsection (b), the right of a secured party with a security interest in equipment described in paragraph (3), or of a lessor or conditional vendor of such equipment, to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies, under such security agreement, lease, or conditional sale contract, to sell, lease, or

otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court.

(2) The right to take possession and to enforce the other rights and remedies described in paragraph (1) shall be subject to section 362 if—

(A) before the date that is 60 days after the date of the order for relief under this chapter, the trustee, subject to the approval of the court, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract; and

(B) any default, other than a default of a kind specified in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

(i) that occurs before the date of the order is cured before the expiration of such 60-day period;

(ii) that occurs after the date of the order and before the expiration of such 60-day period is cured before the later of—

(I) the date that is 30 days after the date of the default; or

(II) the expiration of such 60-day period; and

(iii) that occurs on or after the expiration of such 60-day period is cured in compliance with the terms of such security agreement, lease, or conditional sale contract, if a cure is permitted under that agreement, lease, or contract.

(3) The equipment described in this paragraph—

(A) is—

(i) an aircraft, aircraft engine, propeller, appliance, or spare part (as defined in section 40102 of title 49) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that, at the time such transaction is entered into, holds an air carrier operating certificate issued pursuant to chapter 447 of title 49 for aircraft capable of carrying 10 or more individuals or 6,000 pounds or more of cargo; or

(ii) a documented vessel (as defined in section 30101(1) of title 46) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that, at the time such transaction is entered into, holds a certificate of public convenience and necessity or permit issued by the Department of Transportation; and

(B) includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, to be surrendered or returned by the debtor in connection with the surrender or return of such equipment.

(4) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the approval of the court, to extend the 60-day period specified in subsection (a)(1).

(c)(1) In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or conditional vendor, described in subsec-

tion (a)(1), equipment described in subsection (a)(3), if at any time after the date of the order for relief under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession to the trustee.

(2) At such time as the trustee is required under paragraph (1) to surrender and return equipment described in subsection (a)(3), any lease of such equipment, and any security agreement or conditional sale contract relating to such equipment, if such security agreement or conditional sale contract is an executory contract, shall be deemed rejected.

(d) With respect to equipment first placed in service on or before October 22, 1994, for purposes of this section—

(1) the term “lease” includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

(2) the term “security interest” means a purchase-money equipment security interest.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2629; amended Pub.L. 103-272, § 5(c), July 5, 1994, 108 Stat. 1373; Pub.L. 103-394, Title II, § 201(a), Oct. 22, 1994, 108 Stat. 4119; Pub.L. 106-181, Title VII, § 744(b), Apr. 5, 2000, 114 Stat. 177.

Historical and Revision Notes

1978 Acts. This section, to a large degree, preserves the protection given lessors and conditional vendors of aircraft to a certificated air carrier or of vessels to a certificated water carrier under sections 116(5) and 116(6) of present Chapter X [sections 516(5) and 516(6) of former Title 11]. It is modified to conform with the consolidation of Chapters X [former chapter 10, section 501 et seq.] and XI [former chapter 11 (section 701 et seq.) of former Title 11] and with the new chapter 11 generally. It is also modified to give the trustee in a reorganization case an opportunity to continue in possession of the equipment in question by curing defaults and by making the required lease or purchase payments. This removes the absolute veto power over a reorganization that lessors and conditional vendors have under present law, while entitling them to protection of their investment.

The section overrides the automatic stay or any power of the court to enjoin taking of possession of certain leased, conditionally sold, or liened equipment, unless, [sic] the trustee agrees to perform the debtor's obligations and cures all prior defaults (other than defaults under ipso facto or bankruptcy clauses) within 60 days after the order for relief. The trustee and the equipment financier are permitted to

extend the 60-day period by agreement. During the first 60 days, the automatic stay will apply to prevent foreclosure unless the creditor gets relief from the stay.

The effect of this section will be the same if the debtor has granted the security interest to the financier or if the debtor is leasing equipment from a financier that has leveraged the lease and leased the equipment subject to a security interest of a third party. Senate Report No. 95-989.

1994 Acts. House Report No. 103-180, see 1994 U.S. Code Cong. and Adm. News, p. 818.

House Report No. 103-835, see 1994 U.S. Code Cong. and Adm. News, p. 3340.

2000 Acts. House Conference Report No. 106-513 and Statement by President, see 2000 U.S. Code Cong. and Adm. News, p. 80.

Legislative Statements. Section 1110 of the House amendment adopts an identical provision contained in the House bill without modifications contained in the Senate amendment. This section protects a limited class of financiers of aircraft and vessels and is intended to be narrowly construed to prevent secured parties or lessors from gaining the protection of the section unless the interest of such lessor or secured party is explicitly enumerated there-

in. It should be emphasized that under section 1110(a) a debtor in possession or trustee is given 60 days after the order for relief in a case under chapter 11, to have an opportunity to comply with the provisions of section 1110(a).

During this time the automatic stay will apply and may not be lifted prior to the expiration of the 60-day period. Under section 1110(b), the debtor and secured party or lessor are given an opportunity to extend the 60-day period, but no right to reduce the period is intended. It should additionally be noted that under section 1110(a) the trustee or debtor in possession is not required to assume the executory contract or unexpired lease under section 1110; rather, if the trustee or debtor in possession complies with the requirements of section 1110(a), the trustee or debtor in possession is entitled to retain the aircraft or vessels subject to the normal requirements of section 365. The discussion regarding aircraft and vessels likewise applies with respect to railroad rolling stock in a railroad reorganization under section 1168.

References in Text. Chapter 447 of Title 49, referred to in subsec. (a)(3)(A)(i), is classified to 49 U.S.C.A. § 44701 et seq.

Amendments

2000 Amendments. Pub.L. 106-181, Title VII, § 744(b), rewrote the section, which read:

“(a)(1) The right of a secured party with a security interest in equipment described in paragraph (2) or of a lessor or conditional vendor of such equipment to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract is not affected by section 362, 363, or 1129 or by any power of the court to enjoin the taking of possession unless—

“(A) before the date that is 60 days after the date of the order for relief under this chapter, the trustee, subject to the court’s approval, agrees to perform all obligations of the debtor that become due on or after the date of the order under such security agreement, lease, or conditional sale contract; and

“(B) any default, other than a default of a kind specified in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

“(i) that occurs before the date of the order is cured before the expiration of such 60-day period; and

“(ii) that occurs after the date of the order is cured before the later of—

“(I) the date that is 30 days after the date of the default; or

“(II) the expiration of such 60-day period.

“(2) Equipment is described in this paragraph if it is—

“(A) an aircraft, aircraft engine, propeller, appliance, or spare part (as defined in section 40102 of title 49) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a citizen of the United States (as defined in section 40102 of title 49) holding an air carrier operating certificate issued by the Secretary of Transportation pursuant to chapter 447 of title 49 for aircraft capable of carrying 10 or more individuals or 6,000 pounds or more of cargo; or

“(B) a documented vessel (as defined in section 30101(1) of title 46) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that holds a certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission.

“(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

“(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court’s approval, to extend the 60-day period specified in subsection (a)(1).

“(c) With respect to equipment first placed in service on or prior to the date of enactment of this subsection, for purposes of this section—

“(1) the term ‘lease’ includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

“(2) the term ‘security interest’ means a purchase-money equipment security interest.”

1994 Amendments. Subsec. (a). Pub.L. 103-272, § 5(c), substituted “section 40102(a) of title 49” for “section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301)”, “sec-

tion 30101 of title 46" for "subsection B(4) of the Ship Mortgage Act, 1920 (46 U.S.C. 911(4))", and "Secretary of Transportation" for "Civil Aeronautics Board".

Pub.L. 103-394, § 201(a), in subsec. (a) designated existing text as par. (1), as so designated, substituted provisions directing that the right to take possession of certain equipment is not affected by section 362, 363, or 1129, for provisions directing that the right to take possession of certain equipment is not affected by section 362 or 363 of this title, redesignated former pars. (1) and (2) as par. (1), subpars. (A) and (B), respectively, and added pars. (2) and (3) and subsecs. (c) and (d).

Effective and Applicability Provisions

2000 Acts. Amendment by Pub.L. 106-181 applicable only to fiscal years beginning after September 30, 1999, see section 3 of Pub.L. 106-181, set out as a note under section 106 of this title.

1994 Acts. Amendment by Pub.L. 103-394 effective on Oct. 22, 1994, with this section as amended by section 201 of Pub.L. 103-394 applicable with respect to any lease, as defined by subsec. (c) of this section as so amended, entered into in connection with a settlement of any proceeding in any case pending under Title 11 of the United States Code on Oct. 22, 1994, see section 702 of Pub.L. 103-394, set out as a note under section 101 of this title.

Separability of Provisions. If any provision of or amendment made by Pub.L. 103-394 or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remaining provisions of and amendments made by Pub.L. 103-394 and the application of such provisions and amendments to any person or circumstance shall not be affected thereby, see section 701 of Pub.L. 103-394, set out as a note under section 101 of this title.

Abolition of Interstate Commerce Commission and Transfer of Functions. Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub.L. 104-88, to Surface Transportation Board effective Jan. 1,

1996, by section 702 of Title 49, Transportation, and section 101 of Pub.L. 104-88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub.L. 104-88, set out as a note under section 701 of Title 49.

Aircraft Equipment Settlement Leases Act of 1993. Pub.L. 103-7, Mar. 17, 1993, 107 Stat. 36, provided:

"Section 1. Short Title.

"This Act [this note] may be cited as the 'Aircraft Equipment Settlement Leases Act of 1993'.

"Sec. 2. Treatment of Aircraft Equipment Settlement Leases with the Pension Benefit Guaranty Corporation.

"In the case of any settlement of liability under title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C.A. § 1301 et seq.], entered into by the Pension Benefit Guaranty Corporation and one or more other parties, if—

"(1) such settlement was entered into before, on, or after the date of the enactment of this Act [Mar. 17, 1993],

"(2) at least one party to such settlement was a debtor under title 11 of the United States Code [this title], and

"(3) an agreement that is entered into as part of such settlement provides that such agreement is to be treated as a lease, then such agreement shall be treated as a lease for purposes of section 1110 of such title 11 [this section]."

Termination of Civil Aeronautics Board and Transfer of Certain Functions. All functions, powers, and duties of the Civil Aeronautics Board were terminated or transferred by section 1551 of Title 49, Appendix, Transportation, effective in part on Dec. 31, 1981, in part on Jan. 1, 1983, and in part on Jan. 1, 1985.

Cross References

Effect of conversion, see 11 USCA § 348.

Rights of certain secured parties in rolling stock equipment, see 11 USCA § 1168.

Library References

Bankruptcy reorganization in general; aircraft equipment and vessels, see Bankruptcy § 3504.

Bankruptcy reorganization in general; aircraft equipment and vessels, see C.J.S. Bankruptcy § 370.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1111. Claims and interests

(a) A proof of claim or interest is deemed filed under section 501 of this title for any claim or interest that appears in the schedules filed under section 521(1) or 1106(a)(2) of this title, except a claim or interest that is scheduled as disputed, contingent, or unliquidated.

(b)(1)(A) A claim secured by a lien on property of the estate shall be allowed or disallowed under section 502 of this title the same as if the holder of such claim had recourse against the debtor on account of such claim, whether or not such holder has such recourse, unless—

(i) the class of which such claim is a part elects, by at least two-thirds in amount and more than half in number of allowed claims of such class, application of paragraph (2) of this subsection; or

(ii) such holder does not have such recourse and such property is sold under section 363 of this title or is to be sold under the plan.

(B) A class of claims may not elect application of paragraph (2) of this subsection if—

(i) the interest on account of such claims of the holders of such claims in such property is of inconsequential value; or

(ii) the holder of a claim of such class has recourse against the debtor on account of such claim and such property is sold under section 363 of this title or is to be sold under the plan.

(2) If such an election is made, then notwithstanding section 506(a) of this title, such claim is a secured claim to the extent that such claim is allowed.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2630.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section dispenses with the need for every creditor and equity security holder to file a proof of claim or interest in a reorganization case. Usually the debtor's schedules are accurate enough that they will suffice to determine the claims or interests allowable in the case. Thus, the section specifies that any claim or interest includ-

ed on the debtor's schedules is deemed filed under section 501. This does not apply to claims or interests that are scheduled as disputed, contingent, or unliquidated.

Legislative Statements. A discussion of section 1111(b) of the House amendment is best considered in the context of confirmation and will therefore, be discussed in connection with section 1129.

Cross References

Applicability of subsec. (b) of this section in chapter 9 cases, see section 901.

Effect of list of claims in chapter 9 cases, see section 925.

Election as affecting confirmation of plan, see section 1129.

Filing and allowance of postpetition claims in chapter 9 cases, see section 1305.

Library References:

C.J.S. Bankruptcy §§ 232 et seq., 351, 354.

West's Key No. Digests, Bankruptcy ⇨2821-2933.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1112. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—

- (1) the debtor is not a debtor in possession;
- (2) the case originally was commenced as an involuntary case under this chapter; or
- (3) the case was converted to a case under this chapter other than on the debtor's request.

(b) Except as provided in subsection (c) of this section, on request of a party in interest or the United States trustee or bankruptcy administrator, and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including—

- (1) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation;
- (2) inability to effectuate a plan;
- (3) unreasonable delay by the debtor that is prejudicial to creditors;
- (4) failure to propose a plan under section 1121 of this title within any time fixed by the court;
- (5) denial of confirmation of every proposed plan and denial of a request made for additional time for filing another plan or a modification of a plan;
- (6) revocation of an order of confirmation under section 1144 of this title, and denial of confirmation of another plan or a modified plan under section 1129 of this title;
- (7) inability to effectuate substantial consummation of a confirmed plan;
- (8) material default by the debtor with respect to a confirmed plan;
- (9) termination of a plan by reason of the occurrence of a condition specified in the plan; or
- (10) nonpayment of any fees or charges required under chapter 123 of title 28.

(c) The court may not convert a case under this chapter to a case under chapter 7 of this title if the debtor is a farmer or a corporation that is not a moneyed, business, or commercial corporation, unless the debtor requests such conversion.

(d) The court may convert a case under this chapter to a case under chapter 12 or 13 of this title only if—

- (1) the debtor requests such conversion;
- (2) the debtor has not been discharged under section 1141(d) of this title; and
- (3) if the debtor requests conversion to chapter 12 of this title, such conversion is equitable.

(e) Except as provided in subsections (c) and (f), the court, on request of the United States trustee, may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate if the debtor in a voluntary case fails to file, within fifteen days after the filing of the petition commencing such case or such additional time as the court may allow, the information required by paragraph (1) of section 521, including a list containing the names and addresses of the holders of the twenty largest unsecured claims (or of all unsecured claims if there are fewer than twenty unsecured claims), and the approximate dollar amounts of each of such claims.

(f) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

Pub.L. 95-598, No. 6, 1978, 92 Stat. 2630; Pub.L. 98-353, Title III, § 505, July 10, 1984, 98 Stat. 384; Pub.L. 99-554, Title II, §§ 224, 256, Oct. 27, 1986, 100 Stat. 3102, 3114; Pub.L. 103-394, Title II, § 217(c), October 22, 1994, 108 Stat. 4127.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section brings together all of the conversion and dismissal rules for chapter 11 cases. Subsection (a) gives the debtor an absolute right to convert a voluntarily commenced chapter 11 case in which the debtor remains in possession to a liquidation case.

Subsection (b) gives wide discretion to the court to make an appropriate disposition of the case sua sponte or upon motion of a party in interest, or the court is permitted to convert a reorganization case to a liquidation case or to dismiss the case, whichever is in the best interest of creditors and the estate, but only for cause. Cause may include the continuing loss to or diminution of the estate of an insolvent debtor, the absence of a reasonable likelihood of rehabilitation, the inability to effectuate a plan, unreasonable delay by the debtor that is prejudicial to creditors, failure to file a plan within the appropriate time limits, denial of confirmation and any opportunity to modify or propose a new plan, revocation of confirmation and denial of confirmation of a modified plan, inability to effectuate substantial consummation of a confirmed plan, material default by the debtor under the plan, and termination of the plan by reason of the occurrence of a condition specified in the plan. This list is not exhaustive. The court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases. The power of the court to

act sua sponte should be used sparingly and only in emergency situations.

Subsection (c) prohibits the court from converting a case concerning a farmer or an eleemosynary institution to a liquidation case unless the debtor consents.

Subsection (d) prohibits conversion of a reorganization case to a chapter 13 case unless the debtor requests conversion and his discharge has not been granted or has been revoked.

Subsection (e) reinforces section 109 by prohibiting conversion of a chapter 11 case to a case under another chapter proceedings under which the debtor is not permitted to proceed.

Legislative Statements. Section 1112 of the House amendment represents a compromise between the House bill and Senate amendment with respect to the factors constituting cause for conversion of a case to chapter 7 or dismissal. The House amendment combines two separate factors contained in section 1112(b)(1) and section 1112(b)(2) of the Senate amendment. Section 1112(b)(1) of the House amendment permits the court to convert a case to a case under chapter 7 or to dismiss the case if there is both a continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; requiring both factors to be present simultaneously represents a compromise from the House bill which eliminated both factors from the list of causes enumerated.

Sections 1112(c) and 1112(d) of the House amendment is derived from the House bill which differs from the Senate amendment only as a matter of style.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

1986 Amendment. Subsec. (b). Pub.L. 99-554, § 224(1)(A), added “or the United States trustee” following “party in interest”.

Subsec. (b)(10). Pub.L. 99-554, § 224(1)(B)–(D), added par. (10).

Subsec. (e). Pub.L. 99-554, § 224(3), added subsec. (e). Former subsec. (e) was redesignated (f).

Subsec. (f). Pub.L. 99-554, § 224(2), redesignated former subsec. (e) as (f).

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Savings; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 256, not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 224, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day

period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 224, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 224, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 224, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district,

whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Conversion of

Chapter 7 cases, see section 706.

Chapter 13 cases, see section 1307.

Dismissal of

Chapter 7 cases, see section 707.

Chapter 9 cases, see section 927.

Chapter 13 cases where not converted under this section, see section 1307.

Distribution of property of estate converted to chapter 7, see section 726.

Effect of conversion, see section 348.

Effect of dismissal, see section 349.

Executory contracts and unexpired leases, see section 365.

Liquidation of estate in railroad reorganization cases, see section 1174.

Termination of debtor's taxable period for cases converted to chapter 7, see section 728.

Library References:

C.J.S. Bankruptcy §§ 377-380.

West's Key No. Digests, Bankruptcy ⇨3591(1)-3594.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1113. Rejection of collective bargaining agreements

(a) The debtor in possession, or the trustee if one has been appointed under the provisions of this chapter, other than a trustee in a case covered by subchapter IV of this chapter and by title I of the Railway Labor Act, may assume or reject a collective bargaining agreement only in accordance with the provisions of this section.

(b)(1) Subsequent to filing a petition and prior to filing an application seeking rejection of a collective bargaining agreement, the debtor in possession or trustee (hereinafter in this section, "trustee" shall include a debtor in possession), shall—

(A) make a proposal to the authorized representative of the employees covered by such agreement, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the employees benefits and protections that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and

(B) provide, subject to subsection (d)(3), the representative of the employees with such relevant information as is necessary to evaluate the proposal.

(2) During the period beginning on the date of the making of a proposal provided for in paragraph (1) and ending on the date of the hearing provided for in subsection (d)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such agreement.

(c) The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that—

(1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (b)(1);

(2) the authorized representative of the employees has refused to accept such proposal without good cause; and

(3) the balance of the equities clearly favors rejection of such agreement.

(d)(1) Upon the filing of an application for rejection the court shall schedule a hearing to be held not later than fourteen days after the date of the filing of such application. All interested parties may appear and be heard at such hearing. Adequate notice shall be provided to such parties at least ten days before the date of such hearing. The court may extend the time for the commencement of such hearing for a period not exceeding seven days where the circumstances of the case, and the interests of justice require such extension, or for additional periods of time to which the trustee and representative agree.

(2) The court shall rule on such application for rejection within thirty days after the date of the commencement of the hearing. In the interests of justice, the court may extend such time for ruling for such additional period as the trustee and the employees' representative may agree to. If the court does not rule on such application within thirty days after the date of the commencement of the hearing, or within such additional time as the trustee and the employees' representative may agree to, the trustee may terminate or alter any provisions of the collective bargaining agreement pending the ruling of the court on such application.

(3) The court may enter such protective orders, consistent with the need of the authorized representative of the employee to evaluate the trustee's proposal and the application for rejection, as may be necessary to prevent disclosure of information provided to such representative where such disclosure could compromise the position of the debtor with respect to its competitors in the industry in which it is engaged.

(e) If during a period when the collective bargaining agreement continues in effect, and if essential to the continuation of the debtor's business, or in order to avoid irreparable damage to the estate, the court, after notice and a hearing, may authorize the trustee to implement interim changes in the terms, conditions, wages, benefits, or work rules provided by a collective bargaining agreement. Any hearing under this paragraph shall be scheduled in accordance with the needs of the trustee. The implementation of such interim changes shall not render the application for rejection moot.

(f) No provision of this title shall be construed to permit a trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement prior to compliance with the provisions of this section.

Added Pub.L. 98-353, Title III, § 541(a), July 10, 1984, 98 Stat. 390.

Historical and Revision Notes

References in Text. The Railway Labor Act, referred to in subsec. (a), is Act May 20, 1926, c. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads.

Effective Date. Section 541(c) of Pub. L. 98-353, Title III, July 10, 1984, 98 Stat. 391, provided that: "The amendments made by this section [adding section 1113 of this title] shall become effective upon the date of enactment of this Act [July 10, 1984]; provided that this section shall not apply to cases filed under title 11 of the United States Code which were com-

menced prior to the date of enactment of this section."

For effective date of amendments by Title III of Pub. L. 98-353, see section 553 of Pub. L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy §§ 224, 225.

West's Key No. Digests, Bankruptcy ☞3108, 3113.

§ 1114. Payment of insurance benefits to retired employees

(a) For purposes of this section, the term "retiree benefits" means payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case under this title.

(b)(1) For purposes of this section, the term "authorized representative" means the authorized representative designated pursuant to subsection (c) for persons receiving any retiree benefits covered by a collective bargaining agreement or subsection (d) in the case of persons receiving retiree benefits not covered by such an agreement.

(2) Committees of retired employees appointed by the court pursuant to this section shall have the same rights, powers, and duties as committees appointed under sections 1102 and 1103 of this title for the purpose of carrying out the purposes of sections 1114 and 1129(a)(13) and, as permitted by the court, shall have the power to enforce the rights of persons under this title as they relate to retiree benefits.

(c)(1) A labor organization shall be, for purposes of this section, the authorized representative of those persons receiving any retiree benefits covered by any collective bargaining agreement to which that labor organization is signatory, unless (A) such labor organization elects not to serve as the authorized representative of such persons, or (B) the court, upon a motion by any party in interest, after notice and hearing, determines that different representation of such persons is appropriate.

(2) In cases where the labor organization referred to in paragraph (1) elects not to serve as the authorized representative of those persons receiving any retiree benefits covered by any collective bargaining agreement to which that labor organization is signatory, or in cases where the court, pursuant to paragraph (1) finds different representation of such persons appropriate, the court, upon a motion by any party in interest, and after notice and a hearing, shall appoint a committee of retired employees if the debtor seeks to modify or not pay the retiree benefits or if the court otherwise determines that it is appropriate, from among such persons, to serve as the authorized representative of such persons under this section.

(d) The court, upon a motion by any party in interest, and after notice and a hearing, shall appoint a committee of retired employees if the debtor seeks to modify or not pay the retiree benefits or if the court otherwise determines that it is appropriate, to serve as the authorized representative, under this section, of those persons receiving any retiree benefits not covered by a collective bargaining agreement.

(e)(1) Notwithstanding any other provision of this title, the debtor in possession, or the trustee if one has been appointed under the provisions of this chapter (hereinafter in this section "trustee" shall include a debtor in possession), shall timely pay and shall not modify any retiree benefits, except that—

(A) the court, on motion of the trustee or authorized representative, and after notice and a hearing, may order modification of such payments, pursuant to the provisions of subsections (g) and (h) of this section, or

(B) the trustee and the authorized representative of the recipients of those benefits may agree to modification of such payments,

after which such benefits as modified shall continue to be paid by the trustee.

(2) Any payment for retiree benefits required to be made before a plan confirmed under section 1129 of this title is effective has the status of an allowed administrative expense as provided in section 503 of this title.

(f)(1) Subsequent to filing a petition and prior to filing an application seeking modification of the retiree benefits, the trustee shall—

(A) make a proposal to the authorized representative of the retirees, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the retiree benefits that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and

(B) provide, subject to subsection (k)(3), the representative of the retirees with such relevant information as is necessary to evaluate the proposal.

(2) During the period beginning on the date of the making of a proposal provided for in paragraph (1), and ending on the date of the hearing provided for in subsection (k)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such retiree benefits.

(g) The court shall enter an order providing for modification in the payment of retiree benefits if the court finds that—

(1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (f);

(2) the authorized representative of the retirees has refused to accept such proposal without good cause; and

(3) such modification is necessary to permit the reorganization of the debtor and assures that all creditors, the debtor, and all of the affected parties are treated fairly and equitably, and is clearly favored by the balance of the equities;

except that in no case shall the court enter an order providing for such modification which provides for a modification to a level lower than that proposed by the trustee in the proposal found by the court to have complied with the requirements of this subsection and subsection (f): *Provided, however,* That at any time after an order is entered providing for modification in the payment of retiree benefits, or at any time after an agreement modifying such benefits is made between the trustee and the authorized representative of the recipients of such benefits, the authorized representative may apply to the court for an order increasing those benefits which order shall be granted if the increase in retiree benefits sought is consistent with the standard set forth in paragraph (3): *Provided further,* That neither the trustee nor the authorized representative is precluded from making more than one motion for a modification order governed by this subsection.

(h)(1) Prior to a court issuing a final order under subsection (g) of this section, if essential to the continuation of the debtor's business, or in order to avoid irreparable damage to the estate, the court, after notice and a hearing, may authorize the trustee to implement interim modifications in retiree benefits.

(2) Any hearing under this subsection shall be scheduled in accordance with the needs of the trustee.

(3) The implementation of such interim changes does not render the motion for modification moot.

(i) No retiree benefits paid between the filing of the petition and the time a plan confirmed under section 1129 of this title becomes effective shall be deducted or offset from the amounts allowed as claims for any benefits which remain unpaid, or from the amounts to be paid under the plan with respect to such claims for unpaid benefits, whether such claims for unpaid benefits are based upon or arise from a right to future unpaid benefits or from any benefits not paid as a result of modifications allowed pursuant to this section.

(j) No claim for retiree benefits shall be limited by section 502(b)(7) of this title.

(k)(1) Upon the filing of an application for modifying retiree benefits, the court shall schedule a hearing to be held not later than fourteen days after the date of the filing of such application. All interested parties may appear and be heard at such hearing. Adequate notice shall be provided to such parties at least ten days before the date of such hearing. The court may extend the time for the commencement of such hearing for a period not exceeding seven days where the circumstances of the case, and the interests of justice require such extension, or for additional periods of time to which the trustee and the authorized representative agree.

(2) The court shall rule on such application for modification within ninety days after the date of the commencement of the hearing. In the interests of justice, the court may extend such time for ruling for such additional period as the trustee and the authorized representative may agree to. If the court does not rule on such application within ninety days after the date of the commencement of the hearing, or within such additional time as the trustee and the authorized representative may agree to, the trustee may implement the proposed modifications pending the ruling of the court on such application.

(3) The court may enter such protective orders, consistent with the need of the authorized representative of the retirees to evaluate the trustee's proposal and the application for modification, as may be necessary to prevent disclosure of information provided to such representative where such disclosure could compromise the position of the debtor with respect to its competitors in the industry in which it is engaged.

(l) This section shall not apply to any retiree, or the spouse or dependents of such retiree, if such retiree's gross income for the twelve months preceding the filing of the bankruptcy petition equals or exceeds \$250,000, unless such retiree can demonstrate to the satisfaction of the court that he is unable to obtain health, medical, life, and disability coverage for himself, his spouse, and his dependents who would otherwise be covered by the employer's insurance plan, comparable to the coverage provided by the employer on the day before the filing of a petition under this title.

Added Pub.L. 100-334, § 2(a), June 16, 1988, 102 Stat. 610.

Historical and Revision Notes

Effective Date; Application of Amendments. Section 4 of Pub.L. 100-334 provided that:

“(a) **General Effective Date.**—Except as provided in subsection (b), this Act and the amendments made by this Act [enacting this section, amending section 1129 of this title, enacting provisions set out as notes under this section, and amending and repealing provisions set out as notes under section

1106 of this title] shall take effect on the date of the enactment of this Act [June 16, 1988].

“(b) **Application of Amendments.**—The amendments made by section 2 [enacting this section and amending section 1129 of this title] shall not apply with respect to cases commenced under title 11 of the United States Code [this title] before the date of the enactment of this Act [June 16, 1988].”

Library References:

C.J.S. Bankruptcy §§ 108, 117, 224, 225, 252, 383, 394.

West's Key No. Digests, Bankruptcy ☞2875, 3101, 3108, 3113, 3536.1, 3560.

SUBCHAPTER II—THE PLAN

§ 1121. Who may file a plan

(a) The debtor may file a plan with a petition commencing a voluntary case, or at any time in a voluntary case or an involuntary case.

(b) Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter.

(c) Any party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may file a plan if and only if—

- (1) a trustee has been appointed under this chapter;
 - (2) the debtor has not filed a plan before 120 days after the date of the order for relief under this chapter; or
 - (3) the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan.
- (d) On request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.
- (e) In a case in which the debtor is a small business and elects to be considered a small business—
- (1) only the debtor may file a plan until after 100 days after the date of the order for relief under this chapter;
 - (2) all plans shall be filed within 160 days after the date of the order for relief; and
 - (3) on request of a party in interest made within the respective periods specified in paragraphs (1) and (2) and after notice and a hearing, the court may—
 - (A) reduce the 100-day period or the 160-day period specified in paragraph (1) or (2) for cause; and
 - (B) increase the 100-day period specified in paragraph (1) if the debtor shows that the need for an increase is caused by circumstances for which the debtor should not be held accountable.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2631; Pub.L. 98-353, Title III, § 506, July 10, 1984, 98 Stat. 385; Pub.L. 99-554, Title II, § 283(u), Oct. 27, 1986, 100 Stat. 3118; Pub.L. 103-394, Title II, § 217(d), October 22, 1994, 108 Stat. 4127.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) permits the debtor to file a reorganization plan with a petition commencing a voluntary case or at any time during a voluntary or involuntary case.

Subsection (b) gives the debtor the exclusive right to file a plan during the first 120 days of the case. There are exceptions, however, enumerated in subsection (c). If a trustee has been appointed, if the debtor does not meet the 120-day deadline, or if the debtor fails to obtain the required consent within 180 days after the filing of the petition, any party in interest may propose a plan. This includes the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, and an indenture trustee. The list is not exhaustive. In the case of a

public company, a trustee is appointed within 10 days of the petition. In such a case, for all practical purposes, any party in interest may file a plan.

Subsection (d) permits the court, for cause, to increase or reduce the 120-day and 180-day periods specified. Since, the debtor has an exclusive privilege for 6 months during which others may not file a plan, the granted extension should be based on a showing of some promise of probable success. An extension should not be employed as a tactical device to put pressure on parties in interest to yield to a plan they consider unsatisfactory.

Legislative Statements. Section 1121 of the House amendment is derived from section 1121 of the House bill; section 1121(c)(1) will be satisfied automatically in a case under subchapter IV of title 11.

1994 Act. A qualified small business debtor who elects coverage under subsection (e) is permitted to dispense with creditor commitments; has an exclusivity period for filing a plan of 100 days; and is subject to more liberal provisions for disclosure and solicitation of acceptances for a proposed reorganization plan under § 1125. An extension is permitted with respect to the debtor's original filing time if the debtor shows there were circumstances beyond its control.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Cross References

Effect of conversion, see section 348.

Failure to propose plan as cause for conversion or dismissal, see section 1112.

Filing of plan by trustee, see section 1106.

Filing of plan in

Chapter 9 cases, see section 941.

Chapter 13 cases, see section 1321.

Library References:

C.J.S. Bankruptcy § 382.

West's Key No. Digests, Bankruptcy Ⓒ3533.1-3535.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1122. Classification of claims or interests

(a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

(b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2631.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section codifies current case law surrounding the classification of claims and equity securities. It requires classification based on the nature of the claims or interests classified, and permits inclusion of claims or interests in a particular class only if the claim or interest being included is substantially similar to the other claims or interests of the class.

Effective Date of 1986 Amendments: Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1984 Amendments. See section 553 of Pub. L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1, of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Subsection (b), also a codification of existing practice, contains an exception. The plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Contents of plan, see section 1322.

Filing and allowance of postpetition claims in chapter 13 cases, see section 1305.

Filing of proofs of claims or interests, see section 501.

Library References:

C.J.S. Bankruptcy § 386.

West's Key No. Digests, Bankruptcy ⇨3550.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1123. Contents of plan

(a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall—

(1) designate, subject to section 1122 of this title, classes of claims, other than claims of a kind specified in section 507(a)(1), 507(a)(2), or 507(a)(8) of this title, and classes of interests;

(2) specify any class of claims or interests that is not impaired under the plan;

(3) specify the treatment of any class of claims or interests that is impaired under the plan;

(4) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest;

(5) provide adequate means for the plan's implementation, such as—

(A) retention by the debtor of all or any part of the property of the estate;

(B) transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan;

(C) merger or consolidation of the debtor with one or more persons;

(D) sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate;

(E) satisfaction or modification of any lien;

(F) cancellation or modification of any indenture or similar instrument;

(G) curing or waiving of any default;

(H) extension of a maturity date or a change in an interest rate or other term of outstanding securities;

(I) amendment of the debtor's charter; or

(J) issuance of securities of the debtor, or of any entity referred to in subparagraph (B) or (C) of this paragraph, for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purpose;

(6) provide for the inclusion in the charter of the debtor, if the debtor is a corporation, or of any corporation referred to in paragraph (5)(B) or (5)(C) of this subsection, of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends; and

(7) contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee.

(b) Subject to subsection (a) of this section, a plan may—

(1) impair or leave unimpaired any class of claims, secured or unsecured, or of interests;

(2) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

(3) provide for—

(A) the settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or

(B) the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest;

(4) provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests;

(5) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; and

(6) include any other appropriate provision not inconsistent with the applicable provisions of this title.

(c) In a case concerning an individual, a plan proposed by an entity other than the debtor may not provide for the use, sale, or lease of property exempted under section 522 of this title, unless the debtor consents to such use, sale, or lease.

(d) Notwithstanding subsection (a) of this section and sections 506(b), 1129(a)(7), and 1129(b) of this title, if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2631; Pub.L. 98-353, Title III, § 507, July 10, 1984, 98 Stat. 385; Pub.L. 103-394, Title II, § 206, Title III, §§ 304(h), 305(a), Title V, § 501(d), October 22, 1994, 108 Stat. 4123, 4134, 4146.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) specifies what a plan of reorganization must contain. The plan must designate classes of claims and interests, and specify, by class, the claims or interests that are unimpaired under the plan. Priority claims are not required to be classified because they may not have arisen when the plan is filed. The plan must provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a different, but not better, treatment of his claim or interest.

Paragraph (3) applies to claims, not creditors. Thus, if a creditor is undersecured, and thus has a secured claim and an unsecured claim, this paragraph will be applied independently to each of his claims.

Paragraph (4) of subsection (a) is derived from section 216 of chapter X [former section 616 of this title] with some modifications. It requires the plan to provide adequate means for the plans execution. These means may include retention by the debtor of all or any part of the property of the estate, transfer of all or any part of the property of the estate to one or more entities, whether organized pre- or postconfirmation, merger or consolidation of the debtor with one or more persons, sale and distribution of all or any part of the property of the estate, satisfaction or modification of any lien, cancellation or modification of any indenture or similar instrument, curing or waiving of any default, extension of maturity dates or change in interest rates of securities, amendment of the debtor's charter, and issuance of securities.

Subparagraph (C), as it applies in railroad cases, has the effect of overruling *St. Joe Paper Co. v. Atlantic Coast Line R.R.*, 347 U.S. 298 (1954). [Fla.1954, 74 S.Ct. 574, 98 L.Ed. 710, rehearing denied 74 S.Ct. 734, 347 U.S. 980, 98 L.Ed. 1118]. It will allow the trustee or creditors to propose a plan of merger with another railroad without the consent of the debtor, and the debtor will be bound under proposed 11 U.S.C. 1141(a). See Hearings, pt. 3, at 1616. "Similar instrument" referred to in subparagraph (F) might include a deposit with an

agent for distribution, other than an indenture trustee, such as an agent under an agreement in a railroad conditional sale or lease financing agreement.

Paragraphs (5) and (6) and subsection (b) are derived substantially from Section 216 of Chapter X (11 U.S.C. 616) [former section 616 of this title]. Paragraph (5) requires the plan to prohibit the issuance of nonvoting equity securities, and to provide for an appropriate distribution of voting power among the various classes of equity securities. Paragraph (6) requires that the plan contain only provisions that are consistent with the interests of creditors and equity security holders, and with public policy with respect to the selection of officers, directors, and trustees, and their successors.

Subsection (b) specifies the matters that the plan may propose. The plan may impair or leave unimpaired any claim or interest. The plan may provide for the assumption or rejection of executory contracts or unexpired leases not previously rejected under section 365. The plan may also provide for the treatment of claims by the debtor against other entities that are not settled before the confirmation of the plan. The plan may propose settlement or adjustment of any claim or equity security belonging to the estate, or may propose retention and enforcement of such claim or interest by the debtor or by an agent appointed for that purpose.

The plan may also propose the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of the sale among creditors and equity security holders. This would be a liquidating plan. The subsection permits the plan to include any other appropriate provision not inconsistent with the applicable provisions of the bankruptcy code.

Subsection (c) protects an individual debtor's exempt property by prohibiting its use, sale, or lease under a plan proposed by someone other than the debtor, unless the debtor consents.

Legislative Statements. Section 1123 of the House amendment represents a compromise between similar provisions in the House bill and Senate amendment. The section has

been clarified to clearly indicate that both secured and unsecured claims, or either of them, may be impaired in a case under title 11. In addition assumption or rejection of an executory contract under a plan must comply with section 365 of title 11. Moreover, section 1123(a)(1) has been substantively modified to permit classification of certain kinds of priority claims. This is important for purposes of confirmation under section 1129(a)(9).

Section 1123(a)(5) of the House amendment is derived from a similar provision in the House bill and Senate amendment but deletes the language pertaining to "fair upset price" as an unnecessary restriction. Section 1123 is also intended to indicate that a plan may provide for any action specified in section 1123 in the case of a corporation without a resolution of the board of directors. If the plan is confirmed, then any action proposed in the plan may be taken notwithstanding any otherwise applicable nonbankruptcy law in accordance with section 1142(a) of title 11.

1994 Act. The amendment conforms the treatment of residential mortgages in chapter 11 to that in chapter 13, preventing the modification of the rights of a holder of a claim secured only by a security interest in the debtor's principal residence. Since it is intended to

apply only to home mortgages, it applies only when the debtor is an individual. It does not apply to a commercial property, or to any transaction in which the creditor acquired a lien on property other than real property used as the debtor's residence.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.--Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Section 702(b)(2)(D) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(D) The amendments made by section 305 [creating § 1123(d)] shall apply only to agreements entered into after the date of enactment of this Act [October 22, 1994]."

Effective Date of 1984 Amendments. See section 553 of Pub. L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1, of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of subsecs. (a)(1) to (5) and (b) of this section in chapter 9 cases, see section 901.

Contents of plan filed in

Chapter 13 cases, see section 1322.

Railroad reorganization cases, see section 1172.

Library References:

C.J.S. Bankruptcy §§ 385 et seq.

West's Key No. Digests, Bankruptcy Ⓒ3548.1-3565.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1124. Impairment of claims or interests

Except as provided in section 1123(a)(4) of this title, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan—

(1) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or

(2) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default—

(A) cures any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in section 365(b)(2) of this title;

(B) reinstates the maturity of such claim or interest as such maturity existed before such default;

(C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; and

(D) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2633; Pub.L. 98-353, Title III, § 508, July 10, 1984, 98 Stat. 385; Pub.L. 103-394, Title II, § 213(d), October 22, 1994, 108 Stat. 4126.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. The basic concept underlying this section is not new. It rests essentially on Section 107 of Chapter X (11 U.S.C. 507) [former section 507 of this title], which states that creditors or stockholders or any class thereof "shall be deemed to be 'affected' by a plan only if their or its interest shall be materially and adversely affected thereby."

This section is designed to indicate when contractual rights of creditors or interest holders are not materially affected. It specifies three ways in which the plan may leave a claim or interest unimpaired.

First, the plan may propose not to alter the legal, equitable, or contractual rights to which the claim or interest entitled its holder.

Second, a claim or interest is unimpaired by curing the effect of a default and reinstating the original terms of an obligation when maturity was brought on or accelerated by the default. The intervention of bankruptcy and the defaults represent a temporary crisis which the plan of reorganization is intended to clear away. The holder of a claim or interest who under the plan is restored to his original position, when others receive less or get nothing at all, is fortunate indeed and has no cause to complain. Curing of the default and the assumption of the debt in accordance with its terms is an important reorganization technique for dealing with a particular class of claims, especially secured claims.

Third, a claim or interest is unimpaired if the plan provides for their payment in cash.

In the case of a debt liability, the cash payment is for the allowed amount of the claim, which does not include a redemption premium. If it is an equity security with a fixed liquidation preference, such as a preferred stock, the allowed amount is such liquidation preference, with no redemption premium. With respect to any other equity security, such as a common stock, cash payment must be equal to the "value of such holder's interest in the debtor."

Section 1124 does not include payment "in property" other than cash. Except for a rare case, claims or interests are not by their terms payable in property, but a plan may so provide and those affected thereby may accept or reject the proposed plan. They may not be forced to accept a plan declaring the holders' claims or interests to be "unimpaired."

Notes of Committee on the Judiciary, House Report No. 95-595. Second, the plan is permitted to reinstate a claim or interest and thus leave it unimpaired. Reinstatement consists of curing any default (other than a default under an ipso facto or bankruptcy clause) and reinstatement of the maturity of the claim or interest. Further, the plan may not otherwise alter any legal, equitable, or contractual right to which the claim or interest entitles its holder.

Third, the plan may leave a claim or interest unimpaired by paying its amount in full other than in securities of the debtor, an affiliate of the debtor participating in a joint plan, or a successor to the debtor. These securities are excluded because determination of their value

would require a valuation of the business being reorganized. Use of them to pay a creditor or equity security holder without his consent may be done only under section 1129(b) and only after a valuation of the debtor. Under this paragraph, the plan must pay the allowed amount of the claim in full, in cash or other property, or, in the case of an equity security, must pay the greatest of any fixed liquidation preference to which the terms of the equity security entitle its holder, any fixed price at which the debtor, under the terms of the equity security may redeem such equity security, and the value, as of the effective date of the plan, of the holder's interest in the debtor. The value of the holder's interest need not be determined precisely by valuing the debtor's business if such value is clearly below redemption or liquidation preference values. If such value would require a full-scale valuation of the business, then such interest should be treated as impaired. But, if the debtor corporation is clearly insolvent, then the value of the common stock holder's interest in the debtor is zero, and offering them nothing under the plan of reorganization will not impair their rights.

"Value as of the effective date of the plan," as used in paragraph (3) and in proposed 11 U.S.C. 1179(a)(7)(B), 1129(a)(9), 1129(b), 1172(2), 1325(a)(4), 1325(a)(5)(B), and 1328(b), indicates that the promised payment under the plan must be discounted to present value as of the effective date of the plan. The discounting should be based only on the unpaid balance of the amount due under the plan, until that amount, including interest, is paid in full.

Legislative Statements. Section 1124 of the House amendment is derived from a similar provision in the House bill and Senate amendment. The section defines the new concept of "impairment" of claims or interests; the concept differs significantly from the concept of "materially and adversely affected" under the Bankruptcy Act. Section 1124(3) of the House amendment provides that a holder of a claim or interest is not impaired, if the plan provides that the holder will receive the allowed amount of the holder's claim, or in the case of an interest with a fixed liquidation preference or redemption price, the greater of such price. This adopts the position contained in the House bill and rejects the contrary standard contained in the Senate amendment.

Cross References

Allowance of claims or interests, see section 502.

Applicability of this section in chapter 9 cases, see section 901.

Claims and interests generally, see section 1111.

Filing of proofs of claims or interests, see section 501.

Section 1124(3) of the House amendment rejects a provision contained in section 1124(3)(B)(iii) of the House bill which would have considered a class of interest not to be impaired by virtue of the fact that the plan provided cash or property for the value of the holder's interest in the debtor.

The effect of the House amendment is to permit an interest not to be impaired only if the interest has a fixed liquidation preference or redemption price. Therefore, a class of interests such as common stock, must either accept a plan under section 1129(a)(8), or the plan must satisfy the requirements of section 1129(b)(2)(C) in order for a plan to be confirmed.

A compromise reflected in section 1124(2)(C) of the House amendment indicates that a class of claims is not impaired under the circumstances of section 1124(2) if damages are paid to rectify reasonable reliance engaged in by the holder of a claim or interest arising from the prepetition breach of a contractual provision, such as an ipso facto or bankruptcy clause, or law. Where the rights of third parties are concerned, such as in the case of lease premises which have been rented to a third party, it is not intended that there will be adequate damages to compensate the third party.

1994 Act. The amendment deletes subsection (3), which held creditors to be unimpaired, and thus not entitled to vote or receive postpetition interest, to the extent they were paid the allowed amount of their claims in cash on the effective date of a reorganization plan.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1984 Amendments. See section 553 of Pub. L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy §§ 383, 384.

West's Key No. Digests, Bankruptcy Ⓒ3536.1, 3537.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1125. Postpetition disclosure and solicitation

(a) In this section—

(1) “adequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan; and

(2) “investor typical of holders of claims or interests of the relevant class” means investor having—

(A) a claim or interest of the relevant class;

(B) such a relationship with the debtor as the holders of other claims or interests of such class generally have; and

(C) such ability to obtain such information from sources other than the disclosure required by this section as holders of claims or interest in such class generally have.

(b) An acceptance or rejection of a plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information. The court may approve a disclosure statement without a valuation of the debtor or an appraisal of the debtor’s assets.

(c) The same disclosure statement shall be transmitted to each holder of a claim or interest of a particular class, but there may be transmitted different disclosure statements, differing in amount, detail, or kind of information, as between classes.

(d) Whether a disclosure statement required under subsection (b) of this section contains adequate information is not governed by any otherwise applicable nonbankruptcy law, rule, or regulation, but an agency or official whose duty is to administer or enforce such a law, rule, or regulation may be heard on the issue of whether a disclosure statement contains adequate information. Such an agency or official may not appeal from, or otherwise seek review of, an order approving a disclosure statement.

(e) A person that solicits acceptance or rejection of a plan, in good faith and in compliance with the applicable provisions of this title, or that participates, in good faith and in compliance with the applicable provisions of this title, in the offer, issuance, sale, or purchase of a security, offered or sold under the plan, of the debtor, of an affiliate participating in a joint plan with the debtor, or of a

newly organized successor to the debtor under the plan, is not liable, on account of such solicitation or participation, for violation of any applicable law, rule, or regulation governing solicitation of acceptance or rejection of a plan or the offer, issuance, sale, or purchase of securities.

(f) Notwithstanding subsection (b), in a case in which the debtor has elected under section 1121(e) to be considered a small business—

(1) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

(2) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement as long as the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed at least 10 days prior to the date of the hearing on confirmation of the plan; and

(3) a hearing on the disclosure statement may be combined with a hearing on confirmation of a plan.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2633; Pub.L. 98-353, Title III, § 509, July 10, 1984, 98 Stat. 385; Pub.L. 103-394, Title II, § 217(e), October 22, 1994, 108 Stat. 4127.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section extends disclosure requirements in connection with solicitations to all cases under chapter 11. Heretofore this subject was dealt with by the Bankruptcy Act mainly in the special contexts of railroad reorganizations and chapter X [former section 501 et seq. of this title] cases.

Subsection (a) defines (1) the subject matter of disclosure as “adequate information” and relates the standard of adequacy to an (2) “investor typical of holders or claims or interests of the relevant class.” “Investor” is used broadly here, for it will almost always include a trade creditor to other creditors who originally had no investment intent or interest. It refers to the investment-type decision by those called upon to accept a plan to modify their claims or interests, which typically will involve acceptance of new securities or of a cash payment in lieu thereof.

Both the kind and form of information are left essentially to the judicial discretion of the court, guided by the specification in subparagraph (a)(1) that it be of a kind and in sufficient detail that a reasonable and typical investor can make an informed judgment about the plan. The information required will necessarily be governed by the circumstances of the case.

Reporting and audit standards devised for solvent and continuing businesses do not necessarily fit a debtor in reorganization. Subsection (a)(1) expressly incorporates consideration of the nature and history of the debtor and the condition of its books and records into the determination of what is reasonably practicable to supply. These factors are particularly pertinent to historical data and to discontinued operations of no future relevance.

A plan is necessarily predicated on knowledge of the assets and liabilities being dealt with and on factually supported expectations as to the future course of the business sufficient to meet the feasibility standard in section 1130(a)(11) [now 1129(a)(11)] of this title. It may thus be necessary to provide estimates or judgments for that purpose. Yet it remains practicable to describe, in such detail as may be relevant and needed, the basis for the plan and the data on which supporters of the plan rely.

Subsection (b) establishes the jurisdiction of the court over this subject by prohibiting solicitation of acceptance or rejection of a plan after the commencement of the case, unless the person solicited receives, before or at the time of the solicitation, a written disclosure statement approved by the court, after notice and hearing, as containing adequate information. As under present law, determinations of value, by appraisal or otherwise, are not required if not

needed to accomplish the purpose specified in subsection (a)(1).

Subsection (c) requires that the same disclosure statement be transmitted to each member of a class. It recognizes that the information needed for an informed judgment about the plan may differ among classes. A class whose rights under the plan center on a particular fund or asset would have no use for an extensive description of other matters that could not affect them.

Subsection (d) relieves the court of the need to follow any otherwise applicable Federal or state law in determining the adequacy of the information contained in the disclosure statement submitted for its approval. It authorizes an agency or official, Federal or state, charged with administering cognate laws so preempted to advise the court on the adequacy of proposed disclosure statement. But they are not authorized to appeal the court's decision.

Solicitations with respect to a plan do not involve just mere requests for opinions. Acceptance of the plan vitally affects creditors and shareholders, and most frequently the solicitation involves an offering of securities in exchange for claims or interests. The present bankruptcy statute has exempted such offerings under each of its chapters from the registration and disclosure requirements of the Securities Act of 1933 [former section 77a et seq. of Title 15, Commerce and Trade], an exemption also continued by section 1145(a)(2) of this title. The extension of the disclosure requirements to all chapter 11 cases justifies the coordinate extension of these exemptions. By the same token, no valid purpose is served not to exempt from the requirements of similar state laws in a matter under the exclusive jurisdiction of the Federal bankruptcy laws.

Subsection (e) exonerates any person who, in good faith and in compliance with this title, solicits or participates in the offer, issuance, sale or purchase, under the plan, of a security from any liability, on account of such solicitation or participation, for violation of any law, rule, or regulation governing the offer, issuance, sale, or purchase of securities. This exoneration is coordinate with the exemption from Federal or State registration or licensing requirements provided by section 1145 of this title.

In the nonpublic case, the court, when approving the disclosure statement, has before it the texts of the plan, a proposed disclosure document, and such other information the plan

proponents and other interested parties may present at the hearing. In the final analysis the exoneration which subsection (e) grants must depend on the good faith of the plan proponents and of those who participate in the preparation of the disclosure statement and in the solicitation. Subsection (e) does not affect civil or criminal liability for defects and inadequacies that are beyond the limits of the exoneration that good faith provides.

Section 1125 applies to public companies as well, subject to the qualifications of subsection (f). In case of a public company no solicitations of acceptance is permitted unless authorized by the court upon or after approval of the plan pursuant to section 1128(c). In addition to the documents specified in subsection (b), subsection (f) requires transmission of the opinion and order of the court approving the plan and, if filed, the advisory report of the Securities and Exchange Commission or a summary thereof prepared by the Commission.

Notes of Committee on the Judiciary, House Report No. 95-595. This section is new. It is the heart of the consolidation of the various reorganization chapters found in current law. It requires disclosure before solicitation of acceptances of a plan or reorganization.

Subsection (a) contains two definitions. First, "adequate information" is defined to mean information of a kind, and in sufficient detail, as far as is reasonably practical in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan. Second, "investor typical of holders of claims or interests of the relevant class" is defined to mean an investor having a claim or interest of the relevant class, having such a relationship with the debtor as the holders of other claims or interests of the relevant class have, and having such ability to obtain information from sources other than the disclosure statement as holders of claims or interests of the relevant class have, and having such ability to obtain information from sources other than the disclosure statement as holders of claims or interests of the relevant class have. That is, the hypothetical investor against which the disclosure is measured must not be an insider if other members of the class are not insiders, and so on. In other words, the adequacy of disclosure is measured against the typical investor, not an extraordinary one.

The Supreme Court's rulemaking power will not extend to rulemaking that will prescribe what constitutes adequate information. That standard is a substantive standard. Precisely what constitutes adequate information in any particular instance will develop on a case-by-case basis. Courts will take a practical approach as to what is necessary under the circumstances of each case, such as the cost of preparation of the statements, the need for relative speed in solicitation and confirmation, and, of course, the need for investor protection. There will be a balancing of interests in each case. In reorganization cases, there is frequently great uncertainty. Therefore the need for flexibility is greatest.

Subsection (b) is the operative subsection. It prohibits solicitation of acceptances or rejections of a plan after the commencement of the case unless, at the time of the solicitation or before, there is transmitted to the solicitee the plan or a summary of the plan, and a written disclosure statement approved by the court as containing adequate information. The subsection permits approval of the statement without the necessity of a valuation of the debtor or an appraisal of the debtor's assets. However, in some cases, a valuation or appraisal will be necessary to develop adequate information. The court will be able to determine what is necessary in light of the facts and circumstances of each particular case.

Subsection (c) requires that the same disclosure statement go to all members of a particular class, but permits different disclosure to different classes.

Subsection (d) excepts the disclosure statements from the requirements of the securities laws (such as section 14 of the 1934 Act [section 78n of Title 15, Commerce and Trade] and section 5 of the 1933 Act [section 77e of Title 15]), and from similar State securities laws (blue sky laws, for example). The subsection permits an agency or official whose duty is to administer or enforce such laws (such as the Securities and Exchange Commission or State Corporation Commissioners) to appear and be heard on the issue of whether a disclosure statement contains adequate information, but the agencies and officials are not granted the right of appeal from an adverse determination

in any capacity. They may join in an appeal by a true party in interest, however.

Subsection (e) is a safe harbor provision, and is necessary to make the exemption provided by subsection (d) effective. Without it, a creditor that solicited an acceptance or rejection in reliance on the court's approval of a disclosure statement would be potentially liable under antifraud sections designed to enforce the very sections of the securities laws from which subsection (d) excuses compliance. The subsection protects only persons that solicit in good faith and in compliance with the applicable provisions of the reorganization chapter. It provides protection from legal liability as well as from equitable liability based on an injunctive action by the SEC [Securities and Exchange Commission] or other agency or official.

Legislative Statements. Section 1125 of the House amendment is derived from section 1125 of the House bill and Senate amendment except with respect to section 1125(f) of the Senate amendment. It will not be necessary for the court to consider the report of the examiner prior to approval of a disclosure statement. The investigation of the examiner is to proceed on an independent basis from the procedure of the reorganization under chapter 11. In order to ensure that the examiner's report will be expeditious and fair, the examiner is precluded from serving as a trustee in the case or from representing a trustee if a trustee is appointed, whether the case remains in chapter 11 or is converted to chapter 7 or 13.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1984 Amendments. See section 553 of Pub. L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Exemption from securities laws of certain transactions in which disclosure statements are provided, see section 1145.

Library References:

C.J.S. Bankruptcy §§ 399, 400.

West's Key No. Digests, Bankruptcy C=3539.1, 3540.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1126. Acceptance of plan

(a) The holder of a claim or interest allowed under section 502 of this title may accept or reject a plan. If the United States is a creditor or equity security holder, the Secretary of the Treasury may accept or reject the plan on behalf of the United States.

(b) For the purposes of subsections (c) and (d) of this section, a holder of a claim or interest that has accepted or rejected the plan before the commencement of the case under this title is deemed to have accepted or rejected such plan, as the case may be, if—

(1) the solicitation of such acceptance or rejection was in compliance with any applicable nonbankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation; or

(2) if there is not any such law, rule, or regulation, such acceptance or rejection was solicited after disclosure to such holder of adequate information, as defined in section 1125(a) of this title.

(c) A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

(d) A class of interests has accepted a plan if such plan has been accepted by holders of such interests, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount of the allowed interests of such class held by holders of such interests, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

(e) On request of a party in interest, and after notice and a hearing, the court may designate any entity whose acceptance or rejection of such plan was not in good faith, or was not solicited or procured in good faith or in accordance with the provisions of this title.

(f) Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.

(g) Notwithstanding any other provision of this section, a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2634; Pub.L. 98-353, Title III, § 510, July 10, 1984, 98 Stat. 386.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) of this section permits the holder of a claim or interest allowed under section 502 to accept or reject a proposed plan of reorganization. The subsection also incorporates a provision now found in section 199 of chapter X [former section 599 of this title] that authorizes the Secretary of the Treasury to accept or reject a plan on behalf of the United States when the United States is a creditor or equity security holder.

Subsection (b) governs acceptances and rejections of plans obtained before commencement of a reorganization for a nonpublic company. Paragraph (3) expressly states that subsection (b) does not apply to a public company.

Prepetition solicitation is a common practice under chapter XI [former section 701 et seq. of this title] today, and chapter IX [former section 401 et seq. of this title] current makes explicit provision for it. Section 1126(b) counts a prepetition acceptance or rejection toward the required amounts and number of acceptances only if the solicitation of the acceptance or rejection was in compliance with any applicable nonbankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation. If there is not any such applicable law, rule, or regulation, then the acceptance or rejection is counted only if it was solicited after disclosure of adequate information, to the holder, as defined in section 1125(a)(1). This permits the court to ensure that the requirements of section 1125 are not avoided by prepetition solicitation.

Subsection (c) specifies the required amount and number of acceptances for a class of creditors. A class of creditors has accepted a plan if at least two-thirds in amount and more than one-half in number of the allowed claims of the class that are voted are cast in favor of the plan. The amount and number are computed on the basis of claims actually voted for or against the plan, not as under chapter X [former section 501 et seq. of this title] on the basis of the allowed claims in the class. Subsection (f) excludes from all these calculations claims not voted in good faith, and claims procured or solicited not in good faith or not in accordance with the provisions of this title.

Subsection (c) requires that the same disclosure statement be transmitted to each member of a class. It recognizes that the information

needed for an informed judgment about the plan may differ among classes. A class whose rights under the plan center on a particular fund or asset would have no use for an extensive description of other matters that could not affect them.

Subsection (d) relieves the court of the need to follow any otherwise applicable Federal or state law in determining the adequacy of the information contained in the disclosure statement submitted for its approval. It authorizes an agency or official, Federal or state, charged with administering cognate laws so pre-empted to advise the court on the adequacy of proposed disclosure statement. But they are not authorized to appeal the court's decision.

Solicitations with respect to a plan do not involve just mere requests for opinions. Acceptance of the plan vitally affects creditors and shareholders, and most frequently the solicitation involves an offering of securities in exchange for claims or interests. The present Bankruptcy Act has exempted such offerings under each of its chapters from the registration and disclosure requirements of the Securities Act of 1933 [sections 77f, 77g, and 77j of Title 15, Commerce and Trade], an exemption also continued by section 1145 of this title. The extension of the disclosure requirements to all chapter 11 cases is justified by the integration of the separate chapters into the single chapter 11. By the same token, no valid purpose is served by failing to provide exemption from the requirements of similar state laws in a matter under the exclusive jurisdiction of the Federal bankruptcy laws.

Under subsection (d), with respect to a class of equity securities, it is sufficient for acceptance of the plan if the amount of securities voting for the plan is at least two-thirds of the total actually voted.

Subsection (e) provides that no acceptances are required from any class whose claims or interests are unimpaired under the plan or in the order confirming the plan.

Subsection (g) provides that any class denied participation under the plan is conclusively deemed to have rejected the plan. There is obviously no need to submit a plan for a vote by a class that is to receive nothing. But under subsection (g) the excluded class is like a

class that has not accepted, and is a dissenting class for purposes of confirmation under section 1130.

Legislative Statements. Section 1126 of the House amendment deletes section 1126(e) as contained in the House bill. Section 105 of the bill constitutes sufficient power in the court to designate exclusion of a creditor's claim on the basis of a conflict of interest. Section 1126(f) of the House amendment adopts a provision contained in section 1127(f) of the Senate bill indicating that a class that is

not impaired under a plan is deemed to have accepted a plan and solicitation of acceptances from such class is not required.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Amount and number of claims within class as including claims formerly held by certain creditors, see section 946.

Applicability of subsecs. (a) to (c) and (e) to (g) of this section in chapter 9 cases, see section 901.

Library References:

C.J.S. Bankruptcy §§ 401-405.

West's Key No. Digests, Bankruptcy ⇨3541.1-3547.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1127. Modification of plan

(a) The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan.

(b) The proponent of a plan or the reorganized debtor may modify such plan at any time after confirmation of such plan and before substantial consummation of such plan, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. Such plan as modified under this subsection becomes the plan only if circumstances warrant such modification and the court, after notice and a hearing, confirms such plan as modified, under section 1129 of this title.

(c) The proponent of a modification shall comply with section 1125 of this title with respect to the plan as modified.

(d) Any holder of a claim or interest that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, such plan as modified, unless, within the time fixed by the court, such holder changes such holder's previous acceptance or rejection.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2635; Pub.L. 98-353, Title III, § 511, July 10, 1984, 98 Stat. 386.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Under subsection (a) the proponent may file a proposal to modify a plan prior to confirmation. In the case of a public company the modifying proposal may be filed prior to approval.

Subsection (b) provides that a party in interest eligible to file a plan may file instead of a plan a proposal to modify a plan filed by another. Under subsection (c) a party in interest objecting to some feature of a plan may submit a proposal to modify the plan to meet the objection.

After a plan has been confirmed, but before its substantial consummation, a plan may be modified by leave of court, which subsection (d) provides shall be granted for good cause. Subsection (e) provides that a proposal to modify a plan is subject to the disclosure requirements of section 1125 and as provided in subsection (f). It provides that a creditor or stockholder who voted for or against a plan is deemed to have accepted or rejected the modifying proposal. But if the modification materially and adversely affects any of their interests, they must be afforded an opportunity to change their vote in accordance with the disclosure and solicitation requirements of section 1125.

Under subsection (g) a plan, if modified prior to confirmation, shall be confirmed if it meets the requirements of section 1130.

Notes of Committee on the Judiciary, House Report No. 95-595. Subsection (a) permits the proponent of a plan to modify it at any time before confirmation, subject, of course, to the requirements of sections 1122 and 1123, governing classification and contents of a plan. After the proponent of a plan files a modification with the court, the plan as modi-

fied becomes the plan, and is to be treated the same as an original plan.

Subsection (b) permits modification of a plan after confirmation under certain circumstances. The modification must be proposed before substantial consummation of the plan. The requirements of sections 1122 and 1123 continue to apply. The plan as modified under this subsection becomes the plan only if the court confirms the plan as modified under section 1129 and the circumstances warrant the modification.

Subsection (c) requires the proponent of a modification to comply with the disclosure provisions of section 1125. Of course, if the modification were sufficiently minor, the court might determine that additional disclosure was not required under the circumstances.

Subsection (d) simplifies modification procedure by deeming any creditor or equity security holder that has already accepted or rejected the plan to have accepted or rejected the modification, unless, within the time fixed by the court, the creditor or equity security holder changes this previous acceptance or rejection.

Legislative Statements. Section 1127(a) of the House amendment adopts a provision contained in the House bill permitting only the proponent of a plan to modify the plan and rejecting the alternative of open modification contained in the Senate amendment.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of subsec. (d) of this section in chapter 9 cases, see section 901.

Modification of plan filed in chapter 9 cases, see section 942.

Modification of plan filed in chapter 13 cases

After confirmation, see section 1329.

Before confirmation, see section 1323.

Library References:

C.J.S. Bankruptcy § 410.

West's Key No. Digests, Bankruptcy ⅈ3569.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1128. Confirmation hearing

(a) After notice, the court shall hold a hearing on confirmation of a plan.

(b) A party in interest may object to confirmation of a plan.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2635.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) requires that there be a hearing in every case on the confirmation of the plan. Notice is required.

Subsection (b) permits any party in interest to object to the confirmation of the plan. The

Securities and Exchange Commission and indenture trustees, as parties in interest under section 1109, may object to confirmation of the plan.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Confirmation hearing in chapter 13 cases, see section 1324.

Right to be heard in cases under this chapter, see section 1109.

Library References:

C.J.S. Bankruptcy § 406.

West's Key No. Digests, Bankruptcy ⇌3566.1.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1129. Confirmation of plan

(a) The court shall confirm a plan only if all of the following requirements are met:

(1) The plan complies with the applicable provisions of this title.

(2) The proponent of the plan complies with the applicable provisions of this title.

(3) The plan has been proposed in good faith and not by any means forbidden by law.

(4) Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.


(5)(A)(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and


(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

(6) Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

(7) With respect to each impaired class of claims or interests—

- Interest Rule*
any claim even if no creditors must receive in plan at least what they'd be received under Chpt. 7
- (A) each holder of a claim or interest of such class—
- (i) has accepted the plan; or
 - (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date; or
- (B) if section 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims. 

 (8) With respect to each class of claims or interests—

- (A) such class has accepted the plan;  or
- (B) such class is not impaired under the plan.

(9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(1) or 507(a)(2) of this title, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

(B) with respect to a class of claims of a kind specified in section 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, each holder of a claim of such class will receive—

- (i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

- (ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim; and

(C) with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim, of a value, as of the effective date of the plan, equal to the allowed amount of such claim.

(10) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

(11) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

(12) All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

(13) The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

amdown → (b)(1) Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

(i)(I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

(B) With respect to a class of unsecured claims—

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property.

(C) With respect to a class of interests—

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property. *absolute priority rule*

(c) Notwithstanding subsections (a) and (b) of this section and except as provided in section 1127(b) of this title, the court may confirm only one plan, unless the order of confirmation in the case has been revoked under section 1144 of this title. If the requirements of subsections (a) and (b) of this section are met with respect to more than one plan, the court shall consider the preferences of creditors and equity security holders in determining which plan to confirm.

(d) Notwithstanding any other provision of this section, on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933. In any hearing under this subsection, the governmental unit has the burden of proof on the issue of avoidance.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2635; Pub.L. 98-353, Title III, § 512, July 10, 1984, 98 Stat. 386; Pub.L. 99-554, Title II, §§ 225, 283(v), Oct. 27, 1986, 100 Stat. 3102, 3118; Pub.L. 100-334, § 2(b), June 16, 1988, 102 Stat. 613; Pub.L. 103-394, Title III, § 304(h), Title V, § 501(d), October 22, 1994, 108 Stat. 4134, 4146.

the objection of an impaired senior class may not bar junior claim holders from receiving or retaining property interests in the debtor after reorganization, if they contribute new capital in money or money's worth, reasonably equivalent to the property's value necessary for successful reorganization of the restructured enterprise if exclusivity is waived so that mkt can determine if new val is adequate

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) enumerates the requirement governing confirmation of a plan. The court is required to confirm a plan if and only if all of the requirements are met.

Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as sections 1122 and 1123, governing classification and contents of plan.

Paragraph (2) requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure.

Paragraph (3) requires that the plan have been proposed in good faith, and not by any means forbidden by law.

Paragraph (4) is derived from section 221 of chapter X [former section 621 of this title]. It requires that any payment made or promised by the proponent, the debtor, or person issuing securities or acquiring property under the

plan, for services or for costs and expenses in, or in connection with the case, or in connection with the plan and incident to the case, be disclosed to the court. In addition, any payment made before confirmation must have been reasonable, and any payment to be fixed after confirmation must be subject to the approval of the court as reasonable. Paragraph (5) is also derived from section 221 of chapter X [former section 621 of this title]. It requires the plan to disclose the identity and affiliations of any individual proposed to serve, after confirmation, as a director, officer, or voting trustee of the reorganized debtor. The appointment to or continuance in one of these offices by the individual must be consistent with the interests of creditors and equity security holders and with public policy. The plan must also disclose the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation to be paid to the insider.

Paragraph (6) permits confirmation only if any regulatory commission that will have jurisdiction over the debtor after confirmation of the plan has approved any rate change provided for in the plan, as an alternative, the rate change may be conditioned on such approval.

Paragraph (7) provides that in the case of a public company the court shall confirm the plan if it finds the plan to be fair and equitable and the plan either (1) has been accepted by classes of claims or interests as provided in section 1126, or (2), if not so accepted, satisfies the requirements of subsection (b) of this section.

Paragraphs (8) and (9) apply only in nonpublic cases. Paragraph (8) does not apply the fair and equitable standards in two situations. The first occurs if there is unanimous consent of all affected holders of claims and interests. It is also sufficient for purposes of confirmation if each holder of a claim or interest receives or retains consideration of a value, as of the effective date of the plan, that is not less than each would have or receive if the debtor were liquidated under chapter 7 of this title. This standard adapts the test of "best interest of creditors" as interpreted by the courts under chapter XI [former section 701 et seq. of this title]. It is given broader application in chapter 11 of this title since a plan under chapter 11 may affect not only unsecured claims but secured claims and stock as well.

Under paragraph (9)(A), if a class of claims or interests has not accepted the plan, the court will confirm the plan if, for the dissenting class and any class of equal rank, the negotiated plan provides in value no less than under a plan that is fair and equitable. Such review and determination are not required for any other classes that accepted the plan.

Paragraph 9(A) would permit a senior creditor to adjust his participation for the benefit of stockholders. In such a case, junior creditors, who have not been satisfied in full, may not object if, absent the "give-up", they are receiving all that a fair and equitable plan would give them. To illustrate, suppose the estate is valued at \$1.5 million and claims and stock are:

Claims and stock (millions)	Equity (millions)	
(1) Senior debt	\$1.2	\$1.2
(2) Junior debt	.5	.3
	(1)	
(3) Stock		—
Total	1.7	1.5

¹ No value.

Under the plan, the senior creditor gives up \$100,000 in value for the benefit of stockholders as follows:

	Millions
(1) Senior debt	\$1.1
(2) Junior debt	.3

If the junior creditors dissent, the court may nevertheless confirm the plan since under the fair and equitable standard they had an equity of only \$300,000 and the allocation to equity security holders did not affect them.

Paragraph 9(A) provides a special alternative with respect to secured claims. A plan may be confirmed against a dissenting class of secured claims if the plan or order of confirmation provides for the realization of their security (1) by the retention of the property subject to such security; (2) by a sale of the property and transfer of the claim to the proceeds of sale if the secured creditors were permitted to bid at the sale and set off against the purchase price up to the allowed amount of their claims; or (3) by such other method that will assure them the realization of the indubitable equivalent of the allowed amount of their secured claims. The indubitable equivalent language is intended to follow the strict approach taken by Judge Learned Hand in *In Re Murel Holding Corp.*, 7, 5 F.2d 941 (2nd Cir.1935).

Paragraph (9)(B) provides that, if a class of claims or interests is excluded from participation under the plan, the court may nevertheless confirm the plan if it determines that no class on a parity with or junior to such participates under the plan. In the previous illustration, no confirmation would be permitted if the negotiated plan would grant a participation to stockholders but nothing for junior creditors. As noted elsewhere, by reason of section 1126(g), an excluded class is a dissenting class under section 1130.

Paragraph (10) states that, to be confirmed, the plan must provide that each holder of a claim under section 507 will receive property, as therein noted, of a value equal to the allowed amount of the claim. There are two exceptions: (A) The holder thereof may agree to a different settlement in part or in whole; (B) where a debtor's business is reorganized under chapter 11, this provision requires that taxes entitled to priority (including administrative claims or taxes) must be paid in cash not later than 120 days after the plan is confirmed, unless the Secretary of the Treasury agrees to other terms or kinds of payment. The bill, as

introduced, required full payment in cash within 60 days after the plan is confirmed.

Paragraph (11) requires a determination regarding feasibility of the plan. It is a slight elaboration of the law that has developed in the application of the word “feasible” in Chapter X of the present Act [former section 501 et seq. of this title].

Paragraph (12) requires that at least one class must accept the plan, but any claims or interests held by insiders are not to be included for purposes of determining the number and amount of acceptances.

Subsection (b) provides that if, in the case of a public company, the plan meets the requirements of subsection (a) (except paragraphs (8) and (9) which do not apply to such a company), the court is to confirm the plan if the plan or the order of confirmation provides adequate protection for the realization of the value of the claims or interests of each class not accepting the plan. The intent is to incorporate inclusively, as a guide to the meaning of subsection (a) the provisions of section 216(7) (11 U.S.C. 616(7)) [former section 616(7) of this title] with respect to claims and section 216(8) (11 U.S.C. 616(8)) [former section 616(8) of this title] with respect to equity security interests.

Under subsection (c) the court may confirm only one plan, unless the order of confirmation has been revoked under section 1144. If the requirements for confirmation are met with respect to more than one plan, the court shall consider the preferences of creditors and stockholders in deciding which plan to confirm.

Subsection (d) provides that the bankruptcy court may not confirm a plan of reorganization if its principal purpose is the avoidance of taxes or the avoidance of section 5 of the Securities Act of 1933 (15 U.S.C. 77e) [section 77e of Title 15, Commerce and Trade]. This rule modifies a similar provision of present law (section 269 of the Bankruptcy Act) [former section 669 of this title].

Notes of Committee on the Judiciary, House Report No. 95-595. Paragraph (7) incorporates the former “best interest of creditors” test found in chapter 11, but spells out precisely what is intended. With respect to each class, the holders of the claims or interests of that class must receive or retain under the plan on account of those claims or interest property of a value, as of the effective date of the plan, that is not less than the amount that they would so receive or retain if the debtor

were liquidated under chapter 7 on the effective date of the plan.

In order to determine the hypothetical distribution in a liquidation, the court will have to consider the various subordination provisions of proposed 11 U.S.C. 510, 726(a)(3), 726(a)(4), and the postponement provisions of proposed 11 U.S.C. 724. Also applicable in appropriate cases will be the rules governing partnership distributions under proposed 11 U.S.C. 723, and distributions of community property under proposed 11 U.S.C. 726(c). Under subparagraph (A), a particular holder is permitted to accept less than liquidation value, but his acceptance does not bind the class.

Property under subparagraph (B) may include securities of the debtor. Thus, the provision will apply in cases in which the plan is confirmed under proposed 11 U.S.C. 1129(b).

Paragraph (8) is central to the confirmation standards. It requires that each class either have accepted the plan or be unimpaired.

Paragraph (9) augments the requirements of paragraph (8) by requiring payment of each priority claim in full. It permits payments over time and payment other than in cash, but payment in securities is not intended to be permitted without consent of the priority claimant even if the class has consented. It also permits a particular claimant to accept less than full payment.

Subsection (b) permits the court to confirm a plan notwithstanding failure of compliance with paragraph (8) of subsection (a). The plan must comply with all other paragraphs of subsection (a), including paragraph (9). This subsection contains the so-called cramdown. It requires simply that the plan meet certain standards of fairness to dissenting creditors or equity security holders. The general principle of the subsection permits confirmation notwithstanding nonacceptance by an impaired class if that class and all below it in priority are treated according to the absolute priority rule. The dissenting class must be paid in full before any junior class may share under the plan. If it is paid in full, then junior classes may share. Treatment of classes of secured creditors is slightly different because they do not fall in the priority ladder, but the principle is the same.

Specifically, the court may confirm a plan over the objection of a class of secured claims if the members of that class are unimpaired or if they are to receive under the plan property of a

value equal to the allowed amount of their secured claims, as determined under proposed 11 U.S.C. 506(a). The property is to be valued as of the effective date of the plan, thus recognizing the time-value of money. As used throughout this subsection, "property" includes both tangible and intangible property, such as a security of the debtor or a successor to the debtor under a reorganization plan.

The court may confirm over the dissent of a class of unsecured claims, including priority claims, only if the members of the class are unimpaired, if they will receive under the plan property of a value equal to the allowed amount of their unsecured claims, or if no class junior will share under the plan. That is, if the class is impaired, then they must be paid in full or, if paid less than in full, then no class junior may receive anything under the plan. This codifies the absolute priority rule from the dissenting class on down.

With respect to classes of equity, the court may confirm over a dissent if the members of the class are unimpaired, if they receive their liquidation preference or redemption rights, if any, or if no class junior shares under the plan. This, too, is a codification of the absolute priority rule with respect to equity. If a partnership agreement subordinates limited partners to general partners to any degree, then the general principles of paragraph (3) of this subsection would apply to prevent the general partners from being squeezed out.

One requirement applies generally to all classes before the court may confirm under this subsection. No class may be paid more than in full.

The partial codification of the absolute priority rule here is not intended to deprive senior creditor of compensation for being required to take securities in the reorganized debtor that are of an equal priority with the securities offered to a junior class. Under current law, seniors are entitled to compensation for their loss of priority, and the increased risk put upon them by being required to give up their priority will be reflected in a lower value of the securities given to them than the value of comparable securities given to juniors that have not lost a priority position.

Finally, the proponent must request use of this subsection. The court may not confirm notwithstanding nonacceptance unless the proponent requests and the court may then confirm only if subsection (b) is complied with. The court may not rewrite the plan.

A more detailed explanation follows:

The test to be applied by the court is set forth in the various paragraphs of section 1129(b). The elements of the test are new departing from both the absolute priority rule and the best interests of creditors tests found under the Bankruptcy Act. The court is not permitted to alter the terms of the plan. It must merely decide whether the plan complies with the requirements of section 1129(b). If so, the plan is confirmed, if not the plan is denied confirmation.

The procedure followed is simple. The court examines each class of claims or interests designated under section 1123(a)(1) to see if the requirements of section 1129(b) are met. If the class is a class of secured claims, then paragraph (1) contains two tests that must be complied with in order for confirmation to occur. First, under subparagraph (A), the court must be able to find that the consideration given under the plan on account of the secured claim does not exceed the allowed amount of the claim. This condition is not prescribed as a matter of law under section 1129(a), because if the secured claim is compensated in securities of the debtor, a valuation of the business would be necessary to determine the value of the consideration. While section 1129(a) does not contemplate a valuation of the debtor's business, such a valuation will almost always be required under section 1129(b) in order to determine the value of the consideration to be distributed under the plan. Once the valuation is performed, it becomes a simple matter to impose the criterion that no claim will be paid more than in full.

Application of the test under subparagraph (A) also requires a valuation of the consideration "as of the effective date of the plan". This contemplates a present value analysis that will discount value to be received in the future; of course, if the interest rate paid is equivalent to the discount rate used, the present value and face future value will be identical. On the other hand, if no interest is proposed to be paid, the present value will be less than the face future value. For example, consider an allowed secured claim of \$1,000 in a class by itself. One plan could propose to pay \$1,000 on account of this claim as of the effective date of the plan. Another plan could propose to give a note with a \$1,000 face amount due five years after the effective date of the plan on account of this claim. A third plan could propose to give a note in a face

amount of \$1,000 due five years from the effective date of the plan plus six percent annual interest commencing on the effective date of the plan on account of this claim. The first plan clearly meets the requirements of subparagraph (A) because the amount received on account of the second claim has an equivalent present value as of the effective date of the plan equal to the allowed amount of such claim.

The second plan also meets the requirements of subparagraph (A) because the present value of the five years note as of the effective date of the plan will never exceed the allowed amount of the secured claim; the higher the discount rate, the less present value the note will have. Whether the third plan complies with subparagraph (A) depends on whether the discount rate is less than six percent. Normally, the interest rate used in the plan will be *prima facie* evidence of the discount rate because the interest rate will reflect an arms length determination of the risk of the security involved and feasibility considerations will tend to understate interest payments. If the court found the discount rate to be greater than or equal to the interest rate used in the plan, then subparagraph (A) would be complied with because the value of the note as of the effective date of the plan would not exceed the allowed amount of the second claim. If, however, the court found the discount rate to be less than the interest rate proposed under the plan, then the present value of the note would exceed \$1,000 and the plan would fail of confirmation. On the other hand, it is important to recognize that the future principal amount of a note in excess of the allowed amount of a secured claim may have a present value less than such allowed amount, if the interest rate under the plan is correspondingly less than the discount rate.

Even if the requirements of subparagraph (A) are complied with, the class of secured claims must satisfy one of the three clauses in paragraph (B) in order to pass muster. It is sufficient for confirmation if the class has accepted the plan, or if the claims of the class are unimpaired, or if each holder of a secured claim in the class will receive property of a value as of the effective date of the plan equal to the allowed amount of such claim (unless he has agreed to accept less). It is important to note that under section 506(a), the allowed amount of the secured claim will not include any extent to which the amount of such claim exceeds the value of the property securing such claim. Thus, instead of focusing on secured

creditors or unsecured creditors, the statute focuses on secured claims and unsecured claims.

After the court has applied paragraph (1) to each class of secured claims, it then applies paragraph (2) to each class of unsecured claims. Again two separate components must be tested. Subparagraph (A) is identical with the test under section 1129(b)(1)(A) insofar as the holder of an unsecured claim is not permitted to receive property of a value as of the effective date of the plan on account of such claim that is greater than the allowed amount of such claim. In addition, subparagraph (B) requires compliance with one of four conditions. The conditions in clauses (i)-(iii) mirror the conditions of acceptance unimpaired, or full value found in connection with secured claims in section 1129(b)(1)(B).

The condition contained in section 1129(b)(2)(B)(iv) provides another basis for confirming the plan with respect to a class of unsecured claims. It will be of greatest use when an impaired class that has not accepted the plan is to receive less than full value under the plan. The plan may be confirmed under clause (iv) in those circumstances if the class is not unfairly discriminated against with respect to equal classes and if junior classes will receive nothing under the plan. The second criterion is the easier to understand. It is designed to prevent a senior class from giving up consideration to a junior class unless every intermediate class consents, is paid in full, or is unimpaired. This gives intermediate creditors a great deal of leverage in negotiating with senior or secured creditors who wish to have a plan that gives value to equity. One aspect of this test that is not obvious is that whether one class is senior, equal, or junior to another class is relative and not absolute. Thus from the perspective of trade creditors holding unsecured claims, claims of senior and subordinated debentures may be entitled to share on an equal basis with the trade claims. However, from the perspective of the senior unsecured debt, the subordinated debentures are junior.

This point illustrates the lack of precision in the first criterion which demands that a class not be unfairly discriminated against with respect to equal classes. From the perspective of unsecured trade claims, there is no unfair discrimination as long as the total consideration given all other classes of equal rank does not exceed the amount that would result from an exact aliquot distribution. Thus if trade creditors, senior debt, and subordinate debt are

each owed \$100 and the plan proposes to pay the trade debt \$15, the senior debt \$30, and the junior debt \$0, the plan would not unfairly discriminate against the trade debt nor would any other allocation of consideration under the plan between the senior and junior debt be unfair as to the trade debt as long as the aggregate consideration is less than \$30. The senior debt could take \$25 and give up \$5 to the junior debt and the trade debt would have no cause to complain because as far as it is concerned the junior debt is an equal class.

However, in this latter case the senior debt would have been unfairly discriminated against because the trade debt was being unfairly overcompensated; of course the plan would also fail unless the senior debt was unimpaired, received full value, or accepted the plan, because from its perspective a junior class received property under the plan. Application of the test from the perspective of senior debt is best illustrated by the plan that proposes to pay trade debt \$15, senior debt \$25, and junior debt \$0. Here the senior debt is being unfairly discriminated against with respect to the equal trade debt even though the trade debt receives less than the senior debt. The discrimination arises from the fact that the senior debt is entitled to the rights of the junior debt which in this example entitle the senior debt to share on a 2:1 basis with the trade debt.

Finally, it is necessary to interpret the first criterion from the perspective of subordinated debt. The junior debt is subrogated to the rights of senior debt once the senior debt is paid in full. Thus, while the plan that pays trade debt \$15, senior debt \$25, and junior debt \$0 is not unfairly discriminatory against the junior debt, a plan that proposes to pay trade debt \$55, senior debt \$100, and junior debt \$1, would be unfairly discriminatory. In order to avoid discriminatory treatment against the junior debt, at least \$10 would have to be received by such debt under those facts.

The criterion of unfair discrimination is not derived from the fair and equitable rule or from the best interests of creditors test. Rather it preserves just treatment of a dissenting class from the class's own perspective.

If each class of secured claims satisfies the requirements of section 1129(b)(1) and each class of unsecured claims satisfies the requirements of section 1129(b)(2), then the court must still see if each class of interests satisfies section 1129(b)(3) before the plan may be confirmed. Again, two separate criteria must be

met. Under subparagraph (A) if the interest entitles the holder thereof to a fixed liquidation preference or if such interest may be redeemed at a fixed price, then the holder of such interest must not receive under the plan on account of such interest property of a value as of the effective date of the plan greater than the greater of these two values of the interest. Preferred stock would be an example of an interest likely to have liquidation preference or redemption price.

If an interest such as most common stock or the interest of a general partnership has neither a fixed liquidation preference nor a fixed redemption price, then the criterion in subparagraph (A) is automatically fulfilled. In addition subparagraph (B) contains five clauses that impose alternative conditions of which at least one must be satisfied in order to warrant confirmation. The first two clauses contain requirements of acceptance or unimpairment similar to the first two clauses in paragraphs (1)(B) and (2)(B). Clause (iii) is similar to the unimpairment test contained in section 1124(3)(B), except that it will apply to cover the issuance securities of the debtor of a value as of the effective date of the plan equal to the greater of any fixed liquidation preference or redemption price. The fourth clause allows confirmation if junior interests are not compensated under the plan and the fifth clause allows confirmation if there are no junior interests. These clauses recognized that as long as senior classes receive no more than full payment, the objection of a junior class will not defeat confirmation unless a class junior to it is receiving value under the plan and the objecting class is impaired. While a determination of impairment may be made under section 1124(3)(B)(iii) without a precise valuation of the business when common stock is clearly under water, once section 1129(b) is used, a more detailed valuation is a necessary byproduct. Thus, if no property is given to a holder of an interest under the plan, the interest should be clearly worthless in order to find unimpairment under section 1124(3)(B)(iii) and section 1129(a)(8); otherwise, since a class of interests receiving no property is deemed to object under section 1126(g), the more precise valuation of section 1129(b) should be used.

If all of the requirements of section 1129(b) are complied with, then the court may confirm the plan subject to other limitations such as those found in section 1129(a) and (d).

Subsection (c) of section 1129 governs confirmation when more than one plan meets the requirements of the section. The court must consider the preferences of creditors and equity security holders in determining which plan to confirm.

Subsection (d) requires the court to deny confirmation if the principal purpose of the plan is the avoidance of taxes (through use of sections 346 and 1146, and applicable provisions of State law or the Internal Revenue Code [Title 26] governing bankruptcy reorganizations) or the avoidance of section 5 of the Securities Act of 1933 [section 77e of Title 15, Commerce and Trade] (through use of section 1145).

Legislative Statements. Section 1129 of the House amendment relates to confirmation of a plan in a case under chapter 11. Section 1129(a)(3) of the House amendment adopts the position taken in the Senate amendment and section 1129(a)(5) takes the position adopted in the House bill. Section 1129(a)(7) adopts the position taken in the House bill in order to insure that the dissenting members of an accepting class will receive at least what they would otherwise receive under the best interest of creditors test; it also requires that even the members of a class that has rejected the plan be protected by the best interest of creditors test for those rare cramdown cases where a class of creditors would receive more on liquidation than under reorganization of the debtor. Section 1129(a)(7)(C) is discussed in connection with section 1129(b) and section 1111(b). Section 1129(a)(8) of the House amendment adopts the provision taken in the House bill which permits confirmation of a plan as to a particular class without resort to the fair and equitable test if the class has accepted a plan or is unimpaired under the plan.

Section 1129(a)(9) represents a compromise between a similar provision contained in the House bill and the Senate amendment. Under subparagraph (A) claims entitled to priority under section 507(a)(1) or (2) are entitled to receive cash on the effective date of the plan equal to the amount of the claim. Under subparagraph (B) claims entitled to priority under section 507(a)(3), (4), or (5), are entitled to receive deferred cash payments of a present value as of the effective date of the plan equal to the amount of the claims if the class has accepted the plan or cash payments on the effective date of the plan otherwise. Tax claims entitled to priority under section

507(a)(6) of different governmental units may not be contained in one class although all claims of one such unit may be combined and such unit may be required to take deferred cash payments over a period not to exceed 6 years after the date of assessment of the tax with the present value equal to the amount of the claim.

Section 1129(a)(10) is derived from section 1130(a)(12) of the Senate amendment.

Section 1129(b) is new. Together with section 1111(b) and section 1129(a)(7)(C), this section provides when a plan may be confirmed, notwithstanding the failure of an impaired class to accept the plan under section 1129(a)(8). Before discussing section 1129(b) an understanding of section 1111(b) is necessary. Section 1111(b)(1), the general rule that a secured claim is to be treated as a recourse claim in chapter 11 whether or not the claim is nonrecourse by agreement or applicable law. This preferred status for a nonrecourse loan terminates if the property securing the loan is sold under section 363 or is to be sold under the plan.

The preferred status also terminates if the class of which the secured claim is a part elects application of section 1111(b)(2). Section 1111(b)(2) provides that an allowed claim is a secured claim to the full extent the claim is allowed rather than to the extent of the collateral as under section 506(a). A class may elect application of paragraph (2) only if the security is not of inconsequential value and, if the creditor is a recourse creditor, the collateral is not sold under section 363 or to be sold under the plan. Sale of property under section 363 or under the plan is excluded from treatment under section 1111(b) because of the secured party's right to bid in the full amount of his allowed claim at any sale of collateral under section 363(k) of the House amendment.

As previously noted, section 1129(b) sets forth a standard by which a plan may be confirmed notwithstanding the failure of an impaired class to accept the plan.

Paragraph (1) makes clear that this alternative confirmation standard, referred to as "cram down," will be called into play only on the request of the proponent of the plan. Under this cramdown test, the court must confirm the plan if the plan does not discriminate unfairly, and is "fair and equitable," with respect to each class of claims or interests that is impaired under, and has not accepted, the plan. The requirement of the House bill that a

plan not “discriminate unfairly” with respect to a class is included for clarity; the language in the House report interpreting that requirement, in the context of subordinated debentures, applies equally under the requirements of section 1129(b)(1) of the House amendment.

Although many of the factors interpreting “fair and equitable” are specified in paragraph (2), others, which were explicated in the description of section 1129(b) in the House report, were omitted from the House amendment to avoid statutory complexity and because they would undoubtedly be found by a court to be fundamental to “fair and equitable” treatment of a dissenting class. For example, a dissenting class should be assured that no senior class receives more than 100 percent of the amount of its claims. While that requirement was explicitly included in the House bill, the deletion is intended to be one of style and not one of substance.

Paragraph (2) provides guidelines for a court to determine whether a plan is fair and equitable with respect to a dissenting class. It must be emphasized that the fair and equitable requirement applies only with respect to dissenting classes. Therefore, unlike the fair and equitable rule contained in chapter X [former section 501 et seq. of this title] and section 77 of the Bankruptcy Act [former section 205 of this title] under section 1129(b)(2), senior accepting classes are permitted to give up value to junior classes as long as no dissenting intervening class receives less than the amount of its claims in full. If there is no dissenting intervening class and the only dissent is from a class junior to the class to which value have been given up, then the plan may still be fair and equitable with respect to the dissenting class, as long as no class senior to the dissenting class has received more than 100 percent of the amount of its claims.

Paragraph (2) contains three subparagraphs, each of which applies to a particular kind of class of claims or interests that is impaired and has not accepted the plan. Subparagraph (A) applies when a class of secured claims is impaired and has not accepted the plan. The provision applies whether or not section 1111(b) applies. The plan may be crammed down notwithstanding the dissent of a secured class only if the plan complies with clause (i), (ii), or (iii).

Clause (i) permits cramdown if the dissenting class of secured claims will retain its lien on the property whether the property is retained by the debtor or transferred. It should

be noted that the lien secures the allowed secured claim held by such holder. The meaning of “allowed secured claim” will vary depending on whether section 1111(b)(2) applies to such class.

If section 1111(b)(2) applies then the “electing” class is entitled to have the entire allowed amount of the debt related to such property secured by a lien even if the value of the collateral is less than the amount of the debt. In addition, the plan must provide for the holder to receive, on account of the allowed secured claims, payments, either present or deferred, of a principal face amount equal to the amount of the debt and of a present value equal to the value of the collateral.

For example, if a creditor loaned \$15,000,000 to a debtor secured by real property worth \$18,000,000 and the value of the real property had dropped to \$12,000,000 by the date when the debtor commenced a proceeding under chapter 11, the plan could be confirmed notwithstanding the dissent of the creditor as long as the lien remains on the collateral to secure a \$15,000,000 debt, the face amount of present or extended payments to be made to the creditor under the plan is at least \$15,000,000, and the present value of the present or deferred payments is not less than \$12,000,000. The House report accompanying the House bill described what is meant by “present value”.

Clause (ii) is self explanatory. Clause (iii) requires the court to confirm the plan notwithstanding the dissent of the electing secured class if the plan provides for the realization by the secured class of the indubitable equivalents of the secured claims. The standard of “indubitable equivalents” is taken from *In re Murel Holding Corp.*, 75 F.2d 941 (2d Cir.1935) (Learned Hand, Jr.).

Abandonment of the collateral to the creditor would clearly satisfy indubitable equivalence, as would a lien on similar collateral. However, present cash payments less than the secured claim would not satisfy the standard because the creditor is deprived of an opportunity to gain from a future increase in value of the collateral. Unsecured notes as to the secured claim or equity securities of the debtor would not be the indubitable equivalent. With respect to an oversecured creditor, the secured claim will never exceed the allowed claim.

Although the same language applies, a different result pertains with respect to a class of secured claims to which section 1111(b)(2) does

not apply. This will apply to all claims secured by a right of setoff. The court must confirm the plan notwithstanding the dissent of such a class of secured claims if any of three alternative requirements is met. Under clause (i) the plan may be confirmed if the class retains a right of setoff or a lien securing the allowed secured claims of the class and the holders will receive payments of a present value equal to the allowed amount of their secured claims. Contrary to electing classes of secured creditors who retain a lien under subparagraph (A)(i)(I) to the extent of the entire claims secured by such lien, nonelecting creditors retain a lien on collateral only to the extent of their allowed secured claims and not to the extent of any deficiency, and such secured creditors must receive present or deferred payments with a present value equal to the allowed secured claim, which in turn is only the equivalent of the value of the collateral under section 506(a).

Any deficiency claim of a nonelecting class of secured claims is treated as an unsecured claim and is not provided for under subparagraph (A). The plan may be confirmed under clause (ii) if the plan proposes to sell the property free and clear of the secured party's lien as long as the lien will attach to the proceeds and will receive treatment under clause (i) or (iii). Clause (iii) permits confirmation if the plan provides for the realization by the dissenting nonelecting class of secured claims of the indubitable equivalent of the secured claims of such class.

Contrary to an "electing" class to which section 1111(b)(2) applies, the nonelecting class need not be protected with respect to any future appreciation cured claim of such a class is never undersecured by reason of section 506(a). Thus the lien secures only the value of interest of such creditor in the collateral. To the extent deferred payments exceed that amount, they represent interest. In the event of a subsequent default, the portion of the face amount of deferred payments representing unaccrued interest will not be secured by the lien.

Subparagraph (B) applies to a dissenting class of unsecured claims. The court must confirm the plan notwithstanding the dissent of a class of impaired unsecured claims if the plan provides for such claims to receive property with a present value equal to the allowed amount of the claims. Unsecured claims may receive any kind of "property," which is used in its broadest sense, as long as the present

value of the property given to the holders of unsecured claims is equal to the allowed amount of the claims. Some kinds of property, such as securities, may require difficult valuations by the court; in such circumstances the court need only determine that there is a reasonable likelihood that the property given the dissenting class of impaired unsecured claims equals the present value of such allowed claims.

Alternatively, under clause (ii), the court must confirm the plan if the plan provides that holders of any claims or interests junior to the interests of the dissenting class of impaired unsecured claims will not receive any property under the plan on account of such junior claims or interests. As long as senior creditors have not been paid more than in full, and classes of equal claims are being treated so that the dissenting class of impaired unsecured claims is not being discriminated against unfairly, the plan may be confirmed if the impaired class of unsecured claims receives less than 100 cents on the dollar (or nothing at all) as long as no class junior to the dissenting class receives anything at all. Such an impaired dissenting class may not prevent confirmation of a plan by objection merely because a senior class has elected to give up value to a junior class that is higher in priority than the impaired dissenting class of unsecured claims as long as the above safeguards are met.

Subparagraph (C) applies to a dissenting class of impaired interests. Such interests may include the interests of general or limited partners in a partnership, the interests of a sole proprietor in a proprietorship, or the interest of common or preferred stockholders in a corporation. If the holders of such interests are entitled to a fixed liquidation preference or fixed redemption price on account of such interests then the plan may be confirmed notwithstanding the dissent of such class of interests as long as it provides the holders property of a present value equal to the greatest of the fixed redemption price, or the value of such interests. In the event there is no fixed liquidation preference or redemption price, then the plan may be confirmed as long as it provides the holders of such interests property of a present value equal to the value of such interests. If the interests are "under water" then they will be valueless and the plan may be confirmed notwithstanding the dissent of that class of interests even if the plan provides that the holders of such interests will not receive any property on account of such interests.

Alternatively, under clause (ii), the court must confirm the plan notwithstanding the dissent of a class of interests if the plan provides that holders of any interests junior to the dissenting class of interests will not receive or retain any property on account of such junior interests. Clearly, if there are no junior interests junior to the class of dissenting interests, then the condition of clause (ii) is satisfied. The safeguards that no claim or interest receive more than 100 percent of the allowed amount of such claim or interest and that no class be discriminated against unfairly will insure that the plan is fair and equitable with respect to the dissenting class of interests.

Except to the extent of the treatment of secured claims under subparagraph (A) of this statement, the House report remains an accurate description of confirmation of section 1129(b). Contrary to the example contained in the Senate report, a senior class will not be able to give up value to a junior class over the dissent of an intervening class unless the intervening class receives the full amount, as opposed to value, of its claims or interests.

One last point deserves explanation with respect to the admittedly complex subject of confirmation. Section 1129(a)(7)(C) in effect exempts secured creditors making an election under section 1111(b)(2) from application of the best interest of creditors test. In the absence of an election the amount such creditors receive in a plan of liquidation would be the value of their collateral plus any amount recovered on the deficiency in the case of a recourse loan. However, under section 1111(b)(2), the creditors are given an allowed secured claim to the full extent the claim is allowed and have no unsecured deficiency. Since section 1129(b)(2)(A) makes clear that an electing class need receive payments of a present value only equal to the value of the collateral, it is conceivable that under such a "cram down" the electing creditors would receive nothing with respect to their deficiency. The advantage to the electing creditors is that they have a lien securing the full amount of the allowed claim so that if the value of the collateral increases after the case is closed, the deferred payments will be secured claims. Thus it is both reasonable and necessary to exempt such electing class from application of section 1129(a)(7) as a logical consequence of permitting election under section 1111(b)(2).

Section 1131 of the Senate amendment is deleted as unnecessary in light of the protec-

tion given a secured creditor under section 1129(b) of the House amendment.

Payment of taxes in reorganizations.

Under the provisions of section 1141 as revised by the House amendment, an individual in reorganization under chapter 11 will not be discharged from any debt, including prepetition tax liabilities, which are nondischargeable under section 523. Thus, an individual debtor whose plan of reorganization is confirmed under chapter 11 will remain liable for prepetition priority taxes, as defined in section 507, and for tax liabilities which receive no priority but are nondischargeable under section 523, including no return, late return, and fraud liabilities.

In the case of a partnership or a corporation in reorganization under chapter 11 of title 11, section 1141(d)(1) of the House amendment adopts a provision limiting the taxes that must be provided for in a plan before a plan can be confirmed to taxes which receive priority under section 507. In addition, the House amendment makes dischargeable, in effect, tax liabilities attributable to no return, late return, or fraud situations. The amendment thus does not adopt a shareholder continuity test such as was contained in section 1141(d)(2)(A)(iii) of the Senate amendment. However, the House amendment amends section 1106, relating to duties of the trustee, to require the trustee to furnish, on request of a tax authority and without personal liability, information available to the trustee concerning potential prepetition tax liabilities for unfilled returns of the debtor. Depending on the condition of the debtor's books and records, this information may include schedules and files available to the business. The House amendment also does not prohibit a tax authority from disallowing any tax benefit claimed after the reorganization if the item originated in a deduction, credit, or other item improperly reported before the reorganization occurred. It may also be appropriate for the Congress to consider in the future imposing civil or criminal liability on corporate officers for preparing a false or fraudulent tax return. The House amendment also contemplates that the Internal Revenue Service will monitor the relief from liabilities under this provision and advise the Congress if, and to the extent, any significant tax abuse may be resulting from the provision.

Medium of payment of taxes. Federal, State, and local taxes incurred during the administration period of the estate, and during

the “gap” period in an involuntary case, are to be paid solely in cash. Taxes relating to third priority wages are to be paid, under the general rules, in cash on the effective date of the plan, if the class has not accepted the plan, in an amount equal to the allowed amount of the claim. If the class has accepted the plan, the taxes must be paid in cash but the payments must be made at the time the wages are paid which may be paid in deferred periodic installments having a value, on the effective date of the plan, equal to the allowed amount of the tax claims. Prepetition taxes entitled to sixth priority under section 507(a)(6) also must be paid in cash, but the plan may also permit the debtor whether a corporation, partnership, or an individual, to pay the allowed taxes in installments over a period not to exceed 6 years following the date on which the tax authority assesses the tax liability, provided the value of the deferred payments representing principal and interest, as of the effective date of the plan, equals the allowed amount of the tax claim.

The House amendment also modifies the provisions of both bills dealing with the time when tax liabilities of a debtor in reorganization may be assessed by the tax authority. The House amendment follows the Senate amendment in deleting the limitation in present law under which a priority tax assessed after a reorganization plan is confirmed must be assessed within 1 year after the date of the filing of the petition. The House amendment specifies broadly that after the bankruptcy court determines the liability of the estate for a prepetition tax or for an administration period tax, the governmental unit may thereafter assess the tax against the estate, debtor, or successor to the debtor. The party to be assessed will, of course, depend on whether the case is under chapter 7, 11, or 13, whether the debtor is an individual, partnership, or a corporation, and whether the court is determining an individual debtor's personal liability for a nondischargeable tax. Assessment of the tax may only be made, however, within the limits of otherwise applicable law, such as the statute of limitations under the tax law.

Tax avoidance purpose. The House bill provided that no reorganization plan may be approved if the principal purpose of the plan is the avoidance of taxes. The Senate amendment modified the rule so that the bankruptcy court need make a determination of tax avoidance purpose only if it is asked to do so by the appropriate tax authority. Under the Senate

amendment, if the tax authority does not request the bankruptcy court to rule on the purpose of the plan, the tax authority would not be barred from later asserting a tax avoidance motive with respect to allowance of a deduction or other tax benefit claimed after the reorganization. The House amendment adopts the substance of the Senate amendment, but does not provide a basis by which a tax authority may collaterally attack confirmation of a plan of reorganization other than under section 1144.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

1986 Amendment. Subsec. (a)(12), Pub.L. 99-554, § 225, added par. (12).

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1988 Amendment; Application of Amendments. Amendment by Pub.L. 100-334 adding subsec. (a)(13) effective on June 16, 1988 and not applicable to cases commenced under this title before June 16, 1988, see section 4 of Pub.L. 100-334, set out as a note under section 1114 of this title.

Effective Date of 1986 Amendments; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 225, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney

General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 225, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 225, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in

Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 225, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

- Applicability of subsecs. (a)(2), (3), (8), (10), and (b)(1), (2)(A), (2)(B) of this section in chapter 9 cases, see section 901.
- Confirmation of plan in
 - Chapter 9 cases, see section 943.
 - Chapter 13 cases, see section 1325.
 - Railroad reorganization cases, see section 1173.
- Denial of confirmation of plan as cause for conversion or dismissal, see section 1112.
- Effect of confirmation in cases under this chapter, see section 1141.
- Inapplicability of subsecs. (a)(7) and (c) of this section in railroad reorganization cases, see section 1161.
- Revocation of order of confirmation in cases under this chapter, see section 1144.
- Special tax provisions for certain dispositions of securities or instruments under confirmed plan, see section 1146.
- Unclaimed property, see section 347.

Library References:

C.J.S. Bankruptcy §§ 385 et seq.

West's Key No. Digests, Bankruptcy ⇨3548.1-3565.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

SUBCHAPTER III—POSTCONFIRMATION MATTERS**§ 1141. Effect of confirmation**

(a) Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as provided in subsections (d)(2) and (d)(3) of this section and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor.

(d)(1) Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan—

(A) discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of this title, whether or not—

(i) a proof of the claim based on such debt is filed or deemed filed under section 501 of this title;

(ii) such claim is allowed under section 502 of this title; or

(iii) the holder of such claim has accepted the plan; and

(B) terminates all rights and interests of equity security holders and general partners provided for by the plan.

(2) The confirmation of a plan does not discharge an individual debtor from any debt excepted from discharge under section 523 of this title.

(3) The confirmation of a plan does not discharge a debtor if—

(A) the plan provides for the liquidation of all or substantially all of the property of the estate;

(B) the debtor does not engage in business after consummation of the plan; and

(C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

(4) The court may approve a written waiver of discharge executed by the debtor after the order for relief under this chapter.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2638; Pub.L. 98-353, Title III, § 513, July 10, 1984, 98 Stat. 388.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) of this section makes the provisions of a confirmed plan binding on the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of the creditor, equity security holder, or partner is impaired under the plan and whether or not he has accepted the plan. There are two exceptions, enumerated in paragraph (2) and (3) of subsection (d).

Unless the plan or the order confirming the plan provides otherwise, the confirmation of a plan vests all of the property of the estate in the debtor and releases it from all claims and interests of creditors, equity security holders and general partners.

Subsection (d) contains the discharge for a reorganized debtor. Paragraph (1) specifies that the confirmation of a plan discharges the debtor from any debt that arose before the date of the order for relief unless the plan or the order confirming the plan provides otherwise. The discharge is effective against those claims whether or not proof of the claim is filed (or deemed filed), and whether or not the claim is allowed. The discharge also terminates all rights and interests of equity security holders and general partners provided for by the plan. The paragraph permits the plan or the order confirming the plan to provide otherwise, and excepts certain debts from the discharge as provided in paragraphs (2) and (3).

Paragraph (2) of subsection (d) makes clear what taxes remain nondischargeable in the case of a corporate debtor emerging from a reorganization under chapter 11. Nondischargeable taxes in such a reorganization are the priority taxes (under section 507) and tax payments which come due during and after the proceeding under a deferred or part-payment agreement which the debtor had entered into with the tax authority before the bankruptcy proceedings began. On the other hand, a corporation which is taken over by its creditors through a plan of reorganization will not continue to be liable for nonpriority taxes arising

from the corporation's prepetition fraud, failure to file a return, or failure to file a timely return, since the creditors who take over the reorganized company should not bear the burden of acts for which the creditors were not at fault.

Paragraph (3) specifies that the debtor is not discharged by the confirmation of a plan if the plan is a liquidating plan and if the debtor would be denied discharge in a liquidation case under section 727. Specifically, if all or substantially all of the distribution under the plan is of all or substantially all of the property of the estate or the proceeds of it, if the business, if any, of the debtor does not continue, and if the debtor would be denied a discharge under section 727 (such as if the debtor were not an individual or if he had committed an act that would lead to a denial of discharge), the chapter 11 discharge is not granted.

Paragraph (4) authorizes the court to approve a waiver of discharge by the debtor.

Notes of Committee on the Judiciary, House Report No. 95-595. Paragraph (2) [of subsec. (d)] makes applicable to an individual debtor the general exceptions to discharge that are enumerated in section 523(a) of the bankruptcy code [this title].

Legislative Statements. Section 1141(d) of the House amendment is derived from a comparable provision contained in the Senate amendment. However, section 1141(d)(2) of the House amendment is derived from the House bill as preferable to the Senate amendment. It is necessary for a corporation or partnership undergoing reorganization to be able to present its creditors with a fixed list of liabilities upon which the creditors or third parties can make intelligent decisions. Retaining an exception for discharge with respect to nondischargeable taxes would leave an undesirable uncertainty surrounding reorganizations that is unacceptable. Section 1141(d)(3) is derived from the Senate amendment. Section 1141(d)(4) is likewise derived from the Senate amendment.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Confirmation of plan filed under this chapter, see section 1129.
Discharge under chapter 7, see section 727.
Effect of confirmation of plans filed in
 Chapter 9 cases, see section 944.
 Chapter 13 cases, see section 1327.
Effect of conversion, see section 348.
Effect of discharge, see section 524.
Exceptions to discharge, see section 523.
Failure of discharge as cause for conversion, see section 1112.

Library References:

C.J.S. Bankruptcy §§ 407, 408.
West's Key No. Digests, Bankruptcy Ⓒ3568(1-3).

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1142. Implementation of plan

(a) Notwithstanding any otherwise applicable nonbankruptcy law, rule, or regulation relating to financial condition, the debtor and any entity organized or to be organized for the purpose of carrying out the plan shall carry out the plan and shall comply with any orders of the court.

(b) The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2639; Pub.L. 98-353, Title III, § 514, July 10, 1984, 98 Stat. 387.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of subsec. (b) of this section in chapter 9 cases, see section 901.

Library References:

C.J.S. Bankruptcy § 409.
West's Key No. Digests, Bankruptcy Ⓒ3570.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1143. Distribution

If a plan requires presentment or surrender of a security or the performance of any other act as a condition to participation in distribution under the plan, such action shall be taken not later than five years after the date of the entry of the order of confirmation. Any entity that has not within such time presented or surrendered such entity's security or taken any such other action that the plan requires may not participate in distribution under the plan.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2639.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 1143 fixes a 5-year limitation on presentment or surrender of securities or the performance of any other act that is a condition to participation in distribution under the plan. The 5

years runs from the date of the entry of the order of confirmation. Any entity that does not take the appropriate action within the 5-year period is barred from participation in the distribution under the plan.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Distribution of property of estate in chapter 7 cases, see section 726.

Distribution of securities in stockbroker liquidation cases, see section 750.

Library References:

C.J.S. Bankruptcy §§ 351, 352.

West's Key No. Digests, Bankruptcy Ⓒ3442.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1144. Revocation of an order of confirmation

On request of a party in interest at any time before 180 days after the date of the entry of the order of confirmation, and after notice and a hearing, the court may revoke such order if and only if such order was procured by fraud. An order under this section revoking an order of confirmation shall—

- (1) contain such provisions as are necessary to protect any entity acquiring rights in good faith reliance on the order of confirmation; and
- (2) revoke the discharge of the debtor.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2639; Pub.L. 98-353, Title III, § 515, July 10, 1984, 98 Stat. 387.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. If an order of confirmation was procured by fraud, then the court may revoke the order on request of a party in interest if the request is made before 180 days after the date of the entry of the order of confirmation. The order revoking the order of confirmation must revoke the dis-

charge of the debtor, and contain such provisions as are necessary to protect any entity acquiring rights in good faith reliance on the order of confirmation.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an

Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-

353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of this section in chapter 9 cases, see section 901.

Confirmation of one plan as affected by revocation, see section 1129.

Revocation of confirmation order as cause for conversion or dismissal, see section 1112.

Revocation of order of confirmation in chapter 13 cases, see section 1330.

Library References:

C.J.S. Bankruptcy § 411.

West's Key No. Digests, Bankruptcy ⌘3569.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1145. Exemption from securities laws

(a) Except with respect to an entity that is an underwriter as defined in subsection (b) of this section, section 5 of the Securities Act of 1933 and any State or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker or dealer in, a security do not apply to—

(1) the offer or sale under a plan of a security of the debtor, of an affiliate participating in a joint plan with the debtor, or of a successor to the debtor under the plan—

(A) in exchange for a claim against, an interest in, or a claim for an administrative expense in the case concerning, the debtor or such affiliate; or

(B) principally in such exchange and partly for cash or property;

(2) the offer of a security through any warrant, option, right to subscribe, or conversion privilege that was sold in the manner specified in paragraph (1) of this subsection, or the sale of a security upon the exercise of such a warrant, option, right, or privilege;

(3) the offer or sale, other than under a plan, of a security of an issuer other than the debtor or an affiliate, if—

(A) such security was owned by the debtor on the date of the filing of the petition;

(B) the issuer of such security is—

(i) required to file reports under section 13 or 15(d) of the Securities Exchange Act of 1934; and

(ii) in compliance with the disclosure and reporting provision of such applicable section; and

(C) such offer or sale is of securities that do not exceed—

(i) during the two-year period immediately following the date of the filing of the petition, four percent of the securities of such class outstanding on such date; and

(ii) during any 180-day period following such two-year period, one percent of the securities outstanding at the beginning of such 180-day period; or

(4) a transaction by a stockbroker in a security that is executed after a transaction of a kind specified in paragraph (1) or (2) of this subsection in such security and before the expiration of 40 days after the first date on which such security was bona fide offered to the public by the issuer or by or through an underwriter, if such stockbroker provides, at the time of or before such transaction by such stockbroker, a disclosure statement approved under section 1125 of this title, and, if the court orders, information supplementing such disclosure statement.

(b)(1) Except as provided in paragraph (2) of this subsection and except with respect to ordinary trading transactions of an entity that is not an issuer, an entity is an underwriter under section 2(11) of the Securities Act of 1933, if such entity—

(A) purchases a claim against, interest in, or claim for an administrative expense in the case concerning, the debtor, if such purchase is with a view to distribution of any security received or to be received in exchange for such a claim or interest;

(B) offers to sell securities offered or sold under the plan for the holders of such securities;

(C) offers to buy securities offered or sold under the plan from the holders of such securities, if such offer to buy is—

(i) with a view to distribution of such securities; and

(ii) under an agreement made in connection with the plan, with the consummation of the plan, or with the offer or sale of securities under the plan; or

(D) is an issuer, as used in such section 2(11), with respect to such securities.

(2) An entity is not an underwriter under section 2(11) of the Securities Act of 1933 or under paragraph (1) of this subsection with respect to an agreement that provides only for—

(A)(i) the matching or combining of fractional interests in securities offered or sold under the plan into whole interests; or

(ii) the purchase or sale of such fractional interests from or to entities receiving such fractional interests under the plan; or

(B) the purchase or sale for such entities of such fractional or whole interests as are necessary to adjust for any remaining fractional interests after such matching.

(3) An entity other than an entity of the kind specified in paragraph (1) of this subsection is not an underwriter under section 2(11) of the Securities Act of 1933 with respect to any securities offered or sold to such entity in the manner specified in subsection (a)(1) of this section.

(c) An offer or sale of securities of the kind and in the manner specified under subsection (a)(1) of this section is deemed to be a public offering.

(d) The Trust Indenture Act of 1939 does not apply to a note issued under the plan that matures not later than one year after the effective date of the plan. Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2639; Pub.L. 98-353, Title III, § 516, July 10, 1984, 98 Stat. 388; Pub.L. 103-394, Title V, § 501(d)(33), October 22, 1994, 108 Stat. 4146.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section, derived from similar provisions found in sections 264, 393, and 518 of the Bankruptcy Act [former sections 664, 793, and 918 of this title], provides a limited exemption from the securities laws for securities issued under a plan of reorganization and for certain other securities. Subsection (a) exempts from the requirements of section 5 of the Securities Act of 1933 [section 77e of Title 15, Commerce and Trade] and from any State or local law requiring registration or licensing of an issuer of, underwriter of, or broker or dealer in, a security, the offer or sale of certain securities.

Paragraph (1) of subsection (a) exempts the offer or sale under section 364 of any security that is not an equity security or convertible into an equity security. This paragraph is designed to facilitate the issuance of certificates of indebtedness, and should be read in light of the amendment made in section 306 of title III to section 3(a)(7) of the 1933 act [section 77c(a)(7) of Title 15, Commerce and Trade].

Paragraph (2) of subsection (a) exempts the offer or sale of any security of the debtor, a successor to the debtor, or an affiliate in a joint plan, distributed under a plan if such security is exchanged in principal part for securities of the debtor or for allowed claims or administrative expenses. This exemption is carried over from present law, except as to administrative claims, but is limited to prevent distribution of securities to other than claim holders or equity security holders of the debtor or the estate.

Paragraph (3) of subsection (a) exempts the offer or sale of any security that arises from the exercise of a subscription right or from the exercise of a conversion privilege when such subscription right or conversion privilege was issued under a plan. This exemption is necessary in order to enhance the marketability of subscription rights or conversion privileges, including warrants, offered or sold under a plan. This is present law.

Paragraph (4) of subsection (a) exempts sales of portfolio securities, excluding securities of the debtor or its affiliate, owned by the debtor on the date of the filing of the petition. The purpose of this exemption is to allow the debtor or trustee to sell or distribute, without allowing manipulation schemes, restricted portfolio securities held or acquired by the debtor. Subparagraph (B) of section 1145(a)(4) limits the exemption to securities of a company that is required to file reports under section 13 of the Securities Act [section 78m of Title 15, Commerce and Trade] and that is in compliance with all requirements for the continuance of trading those securities. This limitation effectively prevents selling into the market “cats and dogs” of a nonreporting company. Subparagraph (C) places a limitation on the amount of restricted securities that may be distributed. During the case, the trustee may sell up to 4 percent of each class of restricted securities at any time during the first 2 years and 1 percent during any 180-day period thereafter. This relaxation of the resale rules for debtors in holding restricted securities is similar to but less extensive than the relaxation in SEC [Securities and Exchange Commission] Rule 114(c)(3)(v) for the estates of deceased holders of securities.

Paragraph (5) contains an exemption for brokers and dealers (stockbrokers, as defined in title 11) akin to the exemption provided by section 4(3)(A) of the Securities Act of 1933 [section 77d(3)(A) of Title 15, Commerce and Trade]. Instead of being required to supply a prospectus, however, the stockbroker is required to supply the approved disclosure statement, and if the court orders, information supplementing the disclosure statement. Under present law, the stockholder is not required to supply anything.

Subsection (b) is new. The subsection should be read in light of the amendment in section 306 of Title III to the 1933 act [section 77a et seq. of Title 15, Commerce and Trade]. It specifies the standards under which a creditor, equity security holder, or other entity acquiring securities under the plan may resell them. The Securities Act places limitations on

sales by underwriters. This subsection defines who is an underwriter, and thus restricted, and who is free to resell. Paragraph (1) enumerates real underwriters that participate in a classical underwriting. A person is an underwriter if he purchases a claim against, interest in, or claim for an administrative expense in the case concerning, the debtor, with a view to distribution or interest. This provision covers the purchase of a certificate of indebtedness issued under proposed 11 U.S.C. 364 and purchased from the debtor, if the purchase of the certificate was with a view to distribution.

A person is also an underwriter if he offers to sell securities offered or sold under the plan for the holders of such securities, or offers to buy securities offered or sold under the plan from the holders of such securities, if the offer to buy is with a view to distribution of the securities and under an agreement made in connection with the plan, with the consummation of the plan or with the offer or sale of securities under the plan. Finally, a person is an underwriter if he is an issuer, as used in section 2(11) of the Securities Act of 1933 [section 77b(11) of Title 15, Commerce and Trade].

Paragraph (2) of subsection (b) exempts from the definition of underwriter any entity to the extent that any agreement that would bring the entity under the definition in paragraph (1) provides only for the matching combination of fractional interests in the covered securities or the purchase or sale of fractional interests. This paragraph and paragraph (1) are modeled after former rule 133 of the Securities and Exchange Commission.

Paragraph (3) specifies that if an entity is not an underwriter under the provisions of paragraph (1), as limited by paragraph (2), then the entity is not an underwriter for the purposes of the Securities Act of 1933 [section 77a et seq. of Title 15, Commerce and Trade] with respect to the covered securities, that is, those offered or sold in an exempt transaction specified in subsection (a)(2). This makes clear that the current definition of underwriter in section 2(11) of the Securities Act of 1933 [section 77b(11) of Title 15] does not apply to such a creditor. The definition in that section technically applies to any person that purchases securities with "a view to distribution." If literally applied, it would prevent any creditor in a bankruptcy case from selling securities received without filing a registration statement or finding another exemption.

Subsection (b) is a first run transaction exemption and does not exempt a creditor that, for example, some years later becomes an underwriter by reacquiring securities originally issued under a plan.

Subsection (c) makes an offer or sale of securities under the plan in an exempt transaction (as specified in subsection (a)(2)) a public offering, in order to prevent characterization of the distribution as a "private placement" which would result in restrictions, under rule 144 of the SEC [Securities and Exchange Commission] on the resale of the securities.

Legislative Statements. Section 1145 of the House amendment deletes a provision contained in section 1145(a)(1) of the House bill in favor of a more adequate provision contained in section 364(f) of the House amendment. In addition, section 1145(d) has been added to indicate that the Trust Indenture Act [section 77aaa et seq. of Title 15, Commerce and Trade] does not apply to a commercial note issued under a plan, if the note matures not later than 1 year after the effective date of the plan. Some commercial notes receive such an exemption under 304(a)(4) of the Trust Indenture Act of 1939 (15 U.S.C. § 77ddd(a)(4)) [section 77ddd(a)(4) of Title 15] and others may receive protection by incorporation by reference into the Trust Indenture Act of securities exempt under section 3a(3), (7), (9), or (10) of the Securities Act of 1933 [section 77c(a)(3), (7), (9) and (10) of Title 15, respectively].

In light of the amendments made to the Securities Act of 1933 [section 77a et seq. of Title 15, Commerce and Trade] in title III of the House amendment to H.R. 8200, a specific exemption from the Trust Indenture Act [section 77aaa et seq. of Title 15, Commerce and Trade] is required in order to create certainty regarding plans of reorganization. Section 1145(d) is not intended to imply that commercial notes issued under a plan that matures more than 1 year after the effective date of the plan or automatically covered by the Trust Indenture Act of 1939 since such notes may fall within another exemption thereto.

One other point with respect to Section 1145 deserves comment. Section 1145(a)(3) grants a debtor in possession or trustee in chapter 11 an extremely narrow portfolio security exemption from section 5 of the Securities Act of 1933 [section 77e of Title 15, Commerce and Trade] or any comparable State law. The provision was considered by Congress and adopted after much study. The exemption is reasonable and is more restrictive than comparable

provisions under the Securities Act [section 77a et seq. of Title 15, Commerce and Trade] relating to the estates of decedents. Subsequent to passage of H.R. 8200 by the House of Representatives, the Securities and Exchange Commission promulgated Rule 148 to treat with this problem under existing law. Members of Congress received opinions from attorneys indicating dissatisfaction with the Commission's rule although the rule has been amended, the ultimate limitation of 1 percent promulgated by the Commission is wholly unacceptable.

The Commission rule would permit a trustee or debtor in possession to distribute securities at the rate of 1 percent every 6 months. Section 1145(a)(3) permits the trustee to distribute 4 percent of the securities during the 2-year period immediately following the date of the filing of the petition. In addition, the security must be of a reporting company under section 13 of the Securities and Exchange Act of 1934 [section 78m of Title 15, Commerce and Trade], and must be in compliance with all applicable requirements for the continuing of trading in the security on the date that the trustee offers or sells the security.

With these safeguards the trustee or debtor in possession should be able to distribute 4 percent of the securities of a class at any time during the 2-year period immediately following the date of the filing of the petition in the interests of expediting bankruptcy administra-

tion. The same rationale that applies in expeditiously terminating decedents' estates applies no less to an estate under title 11.

References in Text. Section 5 of the Securities Act of 1933, referred to in subsec. (a), is classified to section 77e of Title 15, Commerce and Trade.

Section 13 of the Securities Exchange Act of 1934, referred to in subsec. (a)(3)(B)(i), is classified to section 78m of Title 15.

The Trust Indenture Act of 1939, referred to in subsec. (d), is Title III of Act May 27, 1933, c. 38, as added Aug. 3, 1939, c. 411, 53 Stat. 1149, which is classified to section 77aaa et seq. of Title 15.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Applicability of term "security" to offers or sales under section 364 to underwriters, see section 364.

Applicability of this section in chapter 9 cases, see section 901.

Library References:

C.J.S. Securities Regulation §§ 3, 22, 36, 194, 195, 201.

West's Key No. Digests, Securities Regulation ◊18.10 et seq., 35.11 et seq., 247, 248.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1146. Special tax provisions

(a) For the purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor that is an individual shall terminate on the date of the order for relief under this chapter, unless the case was converted under section 706 of this title.

(b) The trustee shall make a State or local tax return of income for the estate of an individual debtor in a case under this chapter for each taxable period after the order for relief under this chapter during which the case is pending.

(c) The issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp tax or similar tax.

(d) The court may authorize the proponent of a plan to request a determination, limited to questions of law, by a State or local governmental unit charged with responsibility for collection or determination of a tax on or measured by income, of the tax effects, under section 346 of this title and under the law imposing such tax, of the plan. In the event of an actual controversy, the court may declare such effects after the earlier of—

(1) the date on which such governmental unit responds to the request under this subsection; or

(2) 270 days after such request.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2641; Pub.L. 98-353, Title III, § 517, July 10, 1984, 98 Stat. 388.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 1146 provides special tax rules applicable to Title 11 reorganizations. Subsection (a) provides that the taxable period of an individual debtor terminates on the date of the order for relief, unless the case has been converted into a reorganization from a liquidation proceeding.

Subsection (b) requires the trustee of the estate of an individual debtor in a reorganization to file a tax return for each taxable period while the case is pending after the order for relief. For corporations in chapter 11, the trustee is required to file the tax returns due while the case is pending (sec. 346(c)(2)).

Subsection (c) exempts from Federal, State, or local stamp taxes the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan. This subsection is derived from section 267 of the present Bankruptcy Act [former section 667 of this title].

Subsection (d) permits the court to authorize the proponent of a reorganization plan to request from the Internal Revenue Service (or State or local tax authority) an advance ruling on the tax effects of the proposed plan. If a ruling is not obtained within 270 days after the request was made, or if a ruling is obtained but the proponent of the plan disagrees with the ruling, the bankruptcy court may resolve the dispute and determine the tax effects of the proposed plan.

Subsection (e) provides that prepetition taxes which are nondischargeable in a reorganization, and all taxes arising during the adminis-

tration period of the case, may be assessed and collected from the debtor or the debtor's successor in a reorganization (see sec. 505(c) of the bill).

Notes of Committee on the Judiciary, House Report No. 95-595. Section 1146 of title 11 specifies five subsections which embody special tax provisions that apply in a case under chapter 11 of title 11. Subsection (a) indicates that the tax year of an individual debtor terminates on the date of the order for relief under chapter 11. Termination of the taxable year of the debtor commences the tax period of the estate. If the case was converted from chapter 7 of title 11 then the estate is created as a separate taxable entity dating from the order for relief under chapter 7. If multiple conversion of the case occurs, then the estate is treated as a separate taxable entity on the date of the order for relief under the first chapter under which the estate is a separate taxable entity.

Subsection (d) permits the court to authorize the proponent of a plan to request a taxing authority to declare the tax effects of such plan. In the event of an actual controversy, the court may declare the tax effects of the plan of reorganization at any time after the earlier of action by such taxing authority or 270 days after the request. Such a declaration, unless appealed, becomes a final judgment and binds any tax authority that was requested by the proponent to determine the tax effects of the plan.

Legislative Statements. Section 1146 of the House amendment represents a compro-

mise between the House bill and Senate amendment.

The House bill provided rules on the effect of bankruptcy on the taxable year of the debtor and on tax return filing requirements for State and local taxes only. The House bill also exempted from State or local stamp taxes the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan. The House bill also authorized the bankruptcy court to declare the tax effects of a reorganization plan after the proponent of the plan had requested a ruling from State or local tax authority and either had received an unfavorable ruling or the tax authority had not issued a ruling within 270 days.

The Senate amendment deleted the rules concerning the taxable years of the debtor and tax return filing requirements since the Federal rules were to be considered in the next Congress. It broadened the rule exempting transfers of securities to include Federal stamp or similar taxes, if any. In addition, the Senate amendment deleted the provision which

permitted the bankruptcy court to determine the tax effects of a plan.

The House amendment retains the State and local rules in the House bill with one modification. Under the House amendment, the power of the bankruptcy court to declare the tax effects of the plan is limited to issues of law and not to questions of fact such as the allowance of specific deductions. Thus, the bankruptcy court could declare whether the reorganization qualified for taxfree status under State or local tax rules, but it could not declare the dollar amount of any tax attributes that survive the reorganization.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions.

For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Determination of

Number of taxable periods during which debtor may use loss carryover or carryback, see section 346.

Tax liability, see section 505.

Effect of conversion, see section 348.

Special tax provisions in chapter 7 cases, see section 728.

Library References:

C.J.S. Taxation §§ 1079 et seq., 1094, 1100, 1102.

West's Key No. Digests, Taxation ⅈ105½, 982, 1021.1, 1079.1.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

SUBCHAPTER IV—RAILROAD REORGANIZATION

§ 1161. Inapplicability of other sections

Sections 341, 343, 1102(a)(1), 1104, 1105, 1107, 1129(a)(7), and 1129(c) of this title do not apply in a case concerning a railroad.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2641.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. This section

makes inapplicable sections of the bill which are either inappropriate in railroad reorganiza-

tions, or relate to matters which are otherwise dealt with in subchapter IV.

Cross References

Applicability of other sections of this title to chapter 9 cases, see section 901.

Library References:

C.J.S. Bankruptcy § 412.

West's Key No. Digests, Bankruptcy ⇨3651.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1162. Definition

In this subchapter, “Board” means the “Surface Transportation Board.”

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2641; Pub.L. 104-88, Title III, § 302(1), Dec. 29, 1995, 109 Stat. 943.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Two definitions are provided: That “Commission” means the Interstate Commerce Commission, and that “person” includes a governmental unit for purposes of the subchapter. The latter definition is made necessary because governmental unit is excluded from the definition of person in section 101(30).

Legislative Statements. Section 1162 of the House amendment is derived from section 1162(1) of the Senate bill.

Prior Provisions. A prior section 1162 defined the term “Commission” to mean the “Interstate Commerce Commission” for purposes of this subchapter, and was repealed by Pub.L. 104-88, Title III, § 302(1), Dec. 29, 1995, 109 Stat. 943.

Cross References

Definitions applicable in

Cases under this chapter, see section 1101.

Cases under this title, see section 101.

Chapter 9 cases, see section 902.

Commodity broker liquidation cases, see section 761.

Stockbroker liquidation cases, see section 741.

Library References:

C.J.S. Bankruptcy § 412.

West's Key No. Digests, Bankruptcy ⇨3651.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1163. Appointment of trustee

As soon as practicable after the order for relief the Secretary of Transportation shall submit a list of five disinterested persons that are qualified and willing to serve as trustees in the case. The United States trustee shall appoint one of such persons to serve as trustee in the case.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2641; Pub.L. 99-554, Title II, § 226, Oct. 27, 1986, 100 Stat. 3102.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Requires the court to appoint a trustee in every case. Since the trustee may employ whatever help he needs, multiple trusteeships are unnecessary and add to the cost of administration. The present requirement of section 77(c)(1) [former section 205(c)(1) of this title] that the trustee be approved by the Interstate Commerce Commission is unnecessary, since the trustee will be selected either from the panel established under section 606(f) of title 28 [section 606(f) of Title 28, Judiciary and Judicial Procedure], or someone certified by the Director of the Administrative Office of the United States Courts as qualified to become a member of that panel.

Legislative Statements. Section 1163 of the House amendment represents a compromise between the House bill and Senate amendment with respect to the appointment of a trustee in a railroad reorganization. As soon as practicable after the order for relief, the Secretary of Transportation is required to submit a list of five disinterested persons who are qualified to serve as trustee and the court will then appoint one trustee from the list to serve as trustee in the case.

The House amendment deletes section 1163 of the Senate amendment in order to cover intrastate railroads in a case under subchapter IV of chapter 11. The bill does not confer jurisdiction on the Interstate Commerce Commission with respect to intrastate railroads.

1986 Amendment. Pub.L. 99-554, § 226, substituted “relief the Secretary” for “relief, the Secretary” and “The United States trustee shall appoint” for “The court shall appoint”.

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or

Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 226, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 226, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 226, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not

to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 226, except as otherwise provided, with respect to cases

under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Library References:

C.J.S. Bankruptcy § 195.

West's Key No. Digests, Bankruptcy ⇨3004.1.

§ 1164. Right to be heard

The Board, the Department of Transportation, and any State or local commission having regulatory jurisdiction over the debtor may raise and may appear and be heard on any issue in a case under this chapter, but may not appeal from any judgment, order, or decree entered in the case.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2641; Pub.L. 104-88, Title III, § 302(2), Dec. 29, 1995, 109 Stat. 943.

Historical and Revision Notes

Notes of Committee on the Judiciary, House Report No. 95-595. This section gives the same right to raise, and appear and be heard on, any issue in a railroad reorganization case to the Interstate Commerce Commission, the Department of Transportation, and any State or local commission having regulatory jurisdiction over the debtor as is given to the SEC [Securities and Exchange Commission] and indenture trustees under section 1109 in ordinary reorganization cases. The right of appeal is denied the ICC [Interstate Commerce Commission], the Department of Transportation, and State and local regulatory agencies, the same as it is denied the SEC.

Legislative Statements. Section 1164 of the Senate amendment is deleted as a matter to be left to the Rules of Bankruptcy Proce-

dure. It is anticipated that the rules will require a petition in a railroad reorganization to be filed with the Interstate Commerce Commission and the Secretary of Transportation in a case concerning an interstate railroad.

Section 1164 of the House amendment is derived from section 1163 of the House bill. The section makes clear that the Interstate Commerce Commission, the Department of Transportation, and any State or local commission having regulatory jurisdiction over the debtor may raise and appear and be heard on any issue in a case under subchapter IV of chapter 11, but may not appeal from any judgment, order, or decree in the case. As under section 1109 of title 11, such intervening parties are not parties in interest.

Cross References

- Right of Commodity Futures Trading Commission to be heard, see section 762.
Right of Securities and Exchange Commission and party in interest to be heard in case under this chapter, see section 1109.
Right to be heard in cases under this chapter, see section 1109.

Library References:

- C.J.S. Bankruptcy § 38.
West's Key No. Digests, Bankruptcy Ⓒ2205.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1165. Protection of the public interest

In applying sections 1166, 1167, 1169, 1170, 1171, 1172, 1173, and 1174 of this title, the court and the trustee shall consider the public interest in addition to the interests of the debtor, creditors, and equity security holders.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2641.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 1165 requires the court, in consideration of the relief to be granted upon the filing of an involuntary petition, to take into account the "public interest" in the preservation of the debtor's rail service. This is an important factor in railroad reorganization, which distinguishes them from other business reorganizations. Hence, this section modifies the provisions in sections 303 and 305 that govern generally when the business of a debtor may continue to operate, when relief under the Act sought should be granted, and when the petition should be dismissed.

Legislative Statements. Section 1165 of the House amendment represents a modification of sections 1165 and 1167 of the Senate amendment requiring the court and the trustee to consider the broad, general public interest in addition to the interests of the debtor, creditors, and equity security holders in applying specific sections of the subchapter.

Savings Provisions. Section to apply to cases pending under section 77 of the Bankruptcy Act [section 205 of former Title 11] on Nov. 6, 1978, in which the trustee had not filed a plan of reorganization, see section 403(b) of Pub.L. 95-598, set out preceding section 101 of this title.

Library References:

- C.J.S. Bankruptcy § 412.
West's Key No. Digests, Bankruptcy Ⓒ3651.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1166. Effect of subtitle IV of title 49 and of Federal, State, or local regulations

Except with respect to abandonment under section 1170 of this title, or merger, modification of the financial structure of the debtor, or issuance or sale of securities under a plan, the trustee and the debtor are subject to the provisions of subtitle IV of title 49 that are applicable to railroads, and the trustee is subject to orders of any Federal, State, or local regulatory body to the same extent as the

debtor would be if a petition commencing the case under this chapter had not been filed, but—

(1) any such order that would require the expenditure, or the incurring of an obligation for the expenditure, of money from the estate is not effective unless approved by the court; and

(2) the provisions of this chapter are subject to section 601(b) of the Regional Rail Reorganization Act of 1973.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2642; Pub.L. 97-449, § 5(a)(2), Jan. 12, 1983, 96 Stat. 2442; Pub.L. 98-353, Title III, § 518, July 10, 1984, 98 Stat. 388; Pub.L. 103-394, Title V, § 501(d)(34), October 22, 1994, 108 Stat. 4146.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 1168 [now this section] makes the trustee subject to the Interstate Commerce Act [section 10101 et seq. of Title 49, Transportation] and to lawful orders of the Interstate Commerce Commission, the U.S. Department of Transportation, and State and regulatory bodies. The approval of the court is required, however, if the order requires the expenditure of money or the incurring of an expenditure other than the payment of certain interline accounts. The limitation of “lawful orders” of State commissions to those involving “safety, location of tracks, and terminal facilities,” which is contained in present section 77(c)(2) [former section 205(c)(2) of this title], is eliminated.

Subsection (1) further provides that the debtor must pay in cash all amounts owed other carriers for current balances owed for interline freight, passenger and per diem, including incentive per diem, for periods both prior and subsequent to the filing of the petition, without the necessity of court approval.

Subsection (2) makes the provisions of the chapter subject to section 601(b) of the Regional Rail Reorganization Act [section 791(b) of Title 45, Railroad], which excludes the Interstate Commerce Commission from any participation in the reorganization of certain northeast railroads that have transferred their rail properties to Consolidated Rail Corporation (Conrail).

Notes of Committee on the Judiciary, House Report No. 95-595. Section 1164 [now 1166] makes the debtor railroad subject to the provisions of the Interstate Commerce Act [section 10101 et seq. of Title 49, Transportation] that are applicable to railroads, and the trustees subject to the orders of the Interstate Commerce Commission to the same ex-

tent as the debtor would have been if the case had not been commenced. There are several exceptions. The section does not apply with respect to abandonment of rail lines, which is provided for under section 1169, or with respect to merger under a plan, modification of the financial structure of the debtor by reason of the plan, or the issuance or sale of securities under a plan. Further, the orders of the ICC [Interstate Commerce Commission] are not effective if the order would require the expenditure or the incurring of an obligation for the expenditure of money from the estate, unless approved by the court, and the provisions of this chapter are subject to section 601(b) of the Regional Rail Reorganization Act of 1973 [section 791(b) of Title 45, Railroads].

The same rules apply with respect to Federal, State, or local regulations. The trustee is subject to the orders of a Federal, State, or local regulatory body to the same extent as the debtor would be if the case had not been commenced. However, any order that would require the expenditure, or the incurring of an obligation for the expenditure, of money is not effective under [until] approved by the court.

Legislative Statements. Section 1166 of the House amendment is derived from sections 1164 and 1165 of the House bill. An alternative proposal contained in section 1168(1) of the Senate bill is rejected as violative of the principle of equal treatment of all creditors under title 11.

References in Text. Section 601(b) of the Regional Rail Reorganization Act of 1973, referred to in text, is classified to section 791(b) of Title 45, Railroads.

Codification. Pub.L. 98-353 enacted identical amendment as Pub.L. 97-449 previously executed to text.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III,

July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy § 412.

West's Key No. Digests, Bankruptcy Ⓒ3651.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1167. Collective bargaining agreements

Notwithstanding section 365 of this title, neither the court nor the trustee may change the wages or working conditions of employees of the debtor established by a collective bargaining agreement that is subject to the Railway Labor Act except in accordance with section 6 of such Act.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2642; Pub.L. 103-394, Title V, § 501(d)(35), October 22, 1994, 108 Stat. 4146.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 1176 [now this section] is derived from present section 77(n) [former section 205(n) of this title]. It provides that notwithstanding the general section governing the rejection of executory contracts (section 365), neither the court nor the trustee may change the wages or working conditions of employees of the debtor established by a collective bargaining agreement that is subject to the Railway Labor Act [section 151 et seq. of Title 45, Railroads], except in accordance with section 6 of that Act [section 156 of Title 45]. As reported by the subcommittee this section provided that wages and salaries of rail employees could not be affected by the trustee, but that work rules could be rejected by the trustee. The reorganization court was given the authority to review the trustee's decisions and to settle any disputes arising from the rejection. This provision was withdrawn by the full committee, and hearings will be conducted next year by the Human Resources Committee in the area of

rail labor contracts and the trustee's ability to reject them in a bankruptcy situation.

References in Text. The Railway Labor Act, referred to in text, is Act May 20, 1926, c. 347, 44 Stat. 577, which is classified to section 151 et seq. of Title 45, Railroads.

Section 6 of the Railway Labor Act, referred to in text, is classified to section 156 of Title 45.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

Savings Provisions. Section to apply to cases pending under section 77 of the Bankruptcy Act [section 205 of former Title 11] on Nov. 6, 1978, in which the trustee had not filed a plan of reorganization, see section 403(b) of Pub. L. 95-598, set out preceding section 101 of this title.

Cross References

Authorization of trustee to operate business, see section 1108.

Library References:

C.J.S. Bankruptcy §§ 224, 225.

West's Key No. Digests, Bankruptcy Ⓒ3108, 3113.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1168. Rolling stock equipment

(a)(1) The right of a secured party with a security interest in or of a lessor or conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies under such security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court, except that right to take possession and enforce those other rights and remedies shall be subject to section 362, if—

(A) before the date that is 60 days after the date of commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract; and

(B) any default, other than a default of a kind described in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

(i) that occurs before the date of commencement of the case and is an event of default therewith is cured before the expiration of such 60-day period;

(ii) that occurs or becomes an event of default after the date of commencement of the case and before the expiration of such 60-day period is cured before the later of—

(I) the date that is 30 days after the date of the default or event of the default; or

(II) the expiration of such 60-day period; and

(iii) that occurs on or after the expiration of such 60-day period is cured in accordance with the terms of such security agreement, lease, or conditional sale contract, if cure is permitted under that agreement, lease, or conditional sale contract.

(2) The equipment described in this paragraph—

(A) is rolling stock equipment or accessories used on rolling stock equipment, including superstructures or racks, that is subject to a security interest granted by, leased to, or conditionally sold to a debtor; and

(B) includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, that is to be surrendered or returned by the debtor in connection with the surrender or return of such equipment.

(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

(c)(1) In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or conditional vendor, described in subsection (a)(1), equipment described in subsection (a)(2), if at any time after the date of commencement of the case under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession of the trustee.

(2) At such time as the trustee is required under paragraph (1) to surrender and return equipment described in subsection (a)(2), any lease of such equipment, and any security agreement or conditional sale contract relating to such equipment, if such security agreement or conditional sale contract is an executory contract, shall be deemed rejected.

(d) With respect to equipment first placed in service on or prior to October 22, 1994, for purposes of this section—

(1) the term “lease” includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

(2) the term “security interest” means a purchase-money equipment security interest.

(e) With respect to equipment first placed in service after October 22, 1994, for purposes of this section, the term “rolling stock equipment” includes rolling stock equipment that is substantially rebuilt and accessories used on such equipment.

Pub.L. 95–598, Nov. 6, 1978, 92 Stat. 2642; Pub.L. 98–353, Title III, § 519, July 10, 1984, 98 Stat. 388; amended Pub.L. 103–394, Title II, § 201(b), Oct. 22, 1994, 108 Stat. 4120; Pub.L. 106–181, Title VII, § 744(a), Apr. 5, 2000, 114 Stat. 175.

Historical and Revision Notes

Revision Notes and Legislative Reports

1978 Acts. Section 1175 [now this section] continues the protection accorded in present section 77(j) [section 205(j) of former Title 11] to the rights of holders of purchase-money equipment security, and of lessors or conditional vendors of railroad rolling stock, but accords to the trustee a limited period within which to assume the debtor's obligation and to cure any defaults. The rights of such lenders are not affected by the automatic stay and related provisions of sections 362 and 363, or by any power of the court, unless (1) within 60 days after the commencement of the case (or such longer period as may be agreed to by the secured party, lessor or conditional vendor) the trustees, with the approval of the court, agrees [sic] to perform all of the debtor's obligations

under the security agreement, lease or conditional sale contract, and (2) all defaults are cured within the 60-day period. Defaults described in section 365(b)(2)—defaults which are breaches of provisions relating to the insolvency or financial condition of the debtor, or the commencement of a case under this title, or the appointment of a trustee—are for obvious reasons, excepted. Senate Report No. 95–989.

[Section 1166] This section, [now section 1168] derived with changes from the last sentence of present section 77(j) [section 205(j) of former Title 11], protects the interests of rolling stock equipment financiers, while providing the trustee with some opportunity to cure defaults, agree to make payments, and retain and use the equipment. The provision is parallel to

section 1110, concerning aircraft equipment and vessels. House Report No. 95-595.

1984 Acts. Statements by Legislative Leaders, see 1984 U.S.Code Cong. and Adm.News, p. 576.

1994 Acts. House Report No. 103-835, see 1994 U.S. Code Cong. and Adm. News, p. 3340.

2000 Acts. House Conference Report No. 106-513 and Statement by President, see 2000 U.S. Code Cong. and Adm. News, p. 80.

Legislative Statements. Section 1168 of the House amendment incorporates a provision contained in section 1166 of the House bill instead of the provision contained in section 1175 of the Senate amendment for the reasons stated in connection with the discussion of section 1110 of the House amendment.

References in Text. The date of enactment of this subsection, referred to in subsecs. (c) and (d), probably means the date of enactment of section 201(b) of Pub.L. 103-394, which amended this section generally and which was approved Oct. 22, 1994.

Amendments

2000 Amendments. Pub.L. 106-181, Title VII, § 744(a), rewrote the section, which read:

“(a)(1) The right of a secured party with a security interest in or of a lessor or conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract is not affected by section 362, 363, or 1129 or by any power of the court to enjoin the taking of possession, unless—

“(A) before the date that is 60 days after the date of commencement of a case under this chapter, the trustee, subject to the court’s approval, agrees to perform all obligations of the debtor that become due on or after the date of commencement of the case under such security agreement, lease, or conditional sale contract; and

“(B) any default, other than a default of a kind described in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

“(i) that occurs before the date of commencement of the case and is an event of default therewith is cured before the expiration of such 60-day period; and

“(ii) that occurs or becomes an event of default after the date of commencement of the case is cured before the later of—

“(I) the date that is 30 days after the date of the default or event of default; or

“(II) the expiration of such 60-day period.

“(2) Equipment is described in this paragraph if it is rolling stock equipment or accessories used on such equipment, including superstructures and racks, that is subject to a security interest granted by, leased to, or conditionally sold to the debtor.

“(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

“(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court’s approval, to extend the 60-day period specified in subsection (a)(1).

“(c) With respect to equipment first placed in service on or prior to the date of enactment of this subsection, for purposes of this section—

“(1) the term ‘lease’ includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

“(2) the term ‘security interest’ means a purchase-money equipment security interest.

“(d) With respect to equipment first placed in service after the date of enactment of this subsection, for purposes of this section, the term ‘rolling stock equipment’ includes rolling stock equipment that is substantially rebuilt and accessories used on such equipment.”

1994 Amendments. Pub.L. 103-394, § 201(b), completely revised section, substituting provisions directing that the right to take possession of certain equipment is not affected by section 362, 363, or 1129, for provisions directing that the right to take possession of certain equipment is not affected by section 362 or 363 of this title.

1984 Amendments. Subsec. (b). Pub.L. 98-353 added a comma following “approval”.

Effective and Applicability Provisions

2000 Acts. Amendment by Pub.L. 106-181 applicable only to fiscal years beginning after September 30, 1999, see section 3 of Pub.L. 106-181, set out as a note under section 106 of this title.

1994 Acts. Amendment by Pub.L. 103-394 effective on Oct. 22, 1994, and not to apply with respect to cases commenced under Title 11 of the United States Code before Oct. 22, 1994, see section 702 of Pub.L. 103-394, set out as a note under section 101 of this title.

1984 Acts. Amendment by Pub.L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a), formerly 553(a), of Pub.L. 98-353, set out as a note under section 101 of this title.

Savings Provisions. Section to apply to cases pending under section 77 of the Bankruptcy Act [section 205 of former Title 11] on Nov. 6, 1978, in which the trustee had not filed a plan of reorganization, see section 403(b) of Pub. L. 95-598, set out as a note preceding section 101 of this title.

Separability of Provisions. If any provision of or amendment made by Pub.L. 103-394 or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remaining provisions of and amendments made by Pub.L. 103-394 and the application of such provisions and amendments to any person or circumstance shall not be affected thereby, see section 701 of Pub.L. 103-394, set out as a note under section 101 of this title.

Cross References

Rights of certain secured parties in aircraft equipment and vessels, see 11 USCA § 1110.

Library References

Railroad reorganization; interests in rolling stock, see Bankruptcy k3654.

Railroad reorganization; interest in rolling stock equipment, see C.J.S. Bankruptcy § 413.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1169. Effect of rejection of lease of railroad line

(a) Except as provided in subsection (b) of this section, if a lease of a line of railroad under which the debtor is the lessee is rejected under section 365 of this title, and if the trustee, within such time as the court fixes, and with the court's approval, elects not to operate the leased line, the lessor under such lease, after such approval, shall operate the line.

(b) If operation of such line by such lessor is impracticable or contrary to the public interest, the court, on request of such lessor, and after notice and a hearing, shall order the trustee to continue operation of such line for the account of such lessor until abandonment is ordered under section 1170 of this title, or until such operation is otherwise lawfully terminated, whichever occurs first.

(c) During any such operation, such lessor is deemed a carrier subject to the provisions of subtitle IV of title 49 that are applicable to railroads.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2643; Pub.L. 97-449, § 5(a)(3), Jan. 12, 1983, 96 Stat. 2442; Pub.L. 98-353, Title III, § 520, July 10, 1984, 98 Stat. 388.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 1177 [now this section] continues, essentially without change, the provisions relating to the rejection by the trustee of a lease of a line of

railroad now contained in section 77(c)(6) [former section 205(c)(6) of this title]. Subsection (a) requires the lessor of a line of railroad to operate it if the lease is rejected by the trustee

and the trustee, with the approval of the court, elects not to operate the leased line. Subsection (b), however, further provides that if operation by the lessor is impractical or contrary to the public interest, the court shall require the trustee to operate the line for the account of the lessor until the operation is lawfully terminated. Subsection (c) provides that during such operation, the lessor is a carrier subject to the Interstate Commerce Act [section 10101 et seq. of Title 49, Transportation].

Legislative Statements. Section 1169 of the Senate amendment is deleted from the House amendment as unnecessary since 28 U.S.C. 1407 [section 1407 of Title 28, Judiciary and Judicial Procedure] treating with the judicial panel on multi-district litigation will apply by its terms to cases under title 11.

References in Text. The Interstate Commerce Act, referred to in subsec. (c), was formerly set out as section 1 et seq. of Title 49, Transportation, prior to the revision of Title 49 by Pub.L. 95-473, Oct. 13, 1978, 92 Stat. 1337,

and is now covered by section 10101 et seq. of Title 49.

Codification. Pub.L. 98-353 enacted identical amendment as Pub.L. 97-449 previously executed to text.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Savings Provisions. Section to apply to cases pending under section 77 of the Bankruptcy Act [section 205 of former Title 11] on Nov. 6, 1978, in which the trustee had not filed a plan of reorganization, see section 403(b) of Pub. L. 95-598, set out preceding section 101 of this title.

Cross References

Executory contracts in stockbroker liquidation cases, see section 744.

Library References:

C.J.S. Bankruptcy §§ 227, 229.

West's Key No. Digests, Bankruptcy Ⓒ3115.1.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1170. Abandonment of railroad line

(a) The court, after notice and a hearing, may authorize the abandonment of all or a portion of a railroad line if such abandonment is—

- (1)(A) in the best interest of the estate; or
- (B) essential to the formulation of a plan; and
- (2) consistent with the public interest.

(b) If, except for the pendency of the case under this chapter, such abandonment would require approval by the Board under a law of the United States, the trustee shall initiate an appropriate application for such abandonment with the Board. The court may fix a time within which the Board shall report to the court on such application.

(c) After the court receives the report of the Board, or the expiration of the time fixed under subsection (b) of this section, whichever occurs first, the court may authorize such abandonment, after notice to the Board, the Secretary of Transportation, the trustee, any party in interest that has requested notice, any affected shipper or community, and any other entity prescribed by the court, and a hearing.

(d)(1) Enforcement of an order authorizing such abandonment shall be stayed until the time for taking an appeal has expired, or, if an appeal is timely taken, until such order has become final.

(2) If an order authorizing such abandonment is appealed, the court, on request of a party in interest, may authorize suspension of service on a line or a portion of a line pending the determination of such appeal, after notice to the Board, the Secretary of Transportation, the trustee, any party in interest that has requested notice, any affected shipper or community, and any other entity prescribed by the court, and a hearing. An appellant may not obtain a stay of the enforcement of an order authorizing such suspension by the giving of a supersedeas bond or otherwise, during the pendency of such appeal.

(e)(1) In authorizing any abandonment of a railroad line under this section, the court shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees as that established under section 11347 of title 49.

(2) Nothing in this subsection shall be deemed to affect the priorities or timing of payment of employee protection which might have existed in the absence of this subsection.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2643; Pub.L. 96-448, Title II, § 227(a), Oct. 14, 1980, 94 Stat. 1931; Pub.L. 98-353, Title III, § 521, July 10, 1984, 98 Stat. 388; Pub.L. 104-88, Title III, § 302(2), Dec. 29, 1995, 109 Stat. 943.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) of section 1178 [now this section] permits the court to authorize the abandonment of a railroad line if the abandonment is consistent with the public interest and either in the best interest of the estate or essential to the formulation of a plan. This avoids the normal abandonment requirements of generally applicable railroad regulatory law.

Subsection (b) permits some participation by the Interstate Commerce Commission in the abandonment process. The Commission's role, however, is only advisory. The Commission will represent the public interest, while the trustee and various creditors and equity security holders will represent the interests of those who have invested money in the enterprise. The court will balance the various interests and make an appropriate decision. The subsection specifies that if, except for the pendency of the railroad reorganization case, the proposed abandonment would require Commission approval, then the trustee, with the approval of the court, must initiate an application for the abandonment with the Commission. The court may then fix a time within which the Commission must report to the court on the application.

Subsection (c) permits the court to act after it has received the report of the Commission or the time fixed under subsection (b) has expired, whichever occurs first. The court may then authorize the abandonment after notice and a hearing. The notice must go to the Commission, the Secretary of Transportation, the trustee, and party in interest that has requested notice, any affected shipper or community, and any other entity that the court specifies.

Subsection (d) stays the enforcement of an abandonment until the time for taking an appeal has expired, or if an appeal has been taken, until the order has become final. However, the court may, and after notice and a hearing, on request of a party in interest authorize termination of service on the line or a portion of the line pending the determination of the appeal. The notice required is the same as that required under subsection (c). If the court authorizes termination of service pending determination of the appeal, an appellant may not obtain a stay of the enforcement of the order authorizing termination, either by the giving of a supersedeas bond or otherwise, during the pendency of the appeal.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Effective Date of 1980 Amendment. Amendment by Pub.L. 96-448 effective Oct. 1, 1980, see section 710(a) of Pub.L. 96-448, set

out as a note under section 10101 of Title 49, Transportation.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Abandonment of property of estate, see section 554.

Library References:

C.J.S. Bankruptcy § 414.

West's Key No. Digests, Bankruptcy Ⓒ3653.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1171. Priority claims

(a) There shall be paid as an administrative expense any claim of an individual or of the personal representative of a deceased individual against the debtor or the estate, for personal injury to or death of such individual arising out of the operation of the debtor or the estate, whether such claim arose before or after the commencement of the case.

(b) Any unsecured claim against the debtor that would have been entitled to priority if a receiver in equity of the property of the debtor had been appointed by a Federal court on the date of the order for relief under this title shall be entitled to the same priority in the case under this chapter.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2643; Pub.L. 98-353, Title III, § 522, July 10, 1984, 98 Stat. 388.

Historical and Revision Notes

Notes of Committee on the Judiciary, House Report No. 95-595. This section is derived from current law. Subsection (a) grants an administrative expense priority to the claim of any individual (or of the personal representative of a deceased individual) against the debtor or the estate for personal injury to or death of the individual arising out of the operation of the debtor railroad or the estate, whether the claim arose before or after commencement of the case. The priority under current law, found in section 77(n) [former section 205(n) of this title], applies only to employees of the debtor. This subsection expands the protection provided.

Subsection (b) follows present section 77(b) of the Bankruptcy Act [former section 205(b) of this title] by giving priority to any unsecured claims that would be entitled to priority

if a receiver in equity of the property of the debtor had been appointed by a Federal court on the date of the order for relief under the bankruptcy laws. As under current law, the courts will determine the precise contours of the priority recognized by this subsection in each case.

Legislative Statements. Section 1171 of the House amendment is derived from section 1170 of the House bill in lieu of section 1173(a)(9) of the Senate amendment.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-

353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Savings Provisions. Section to apply to cases pending under section 77 of the Bank-

ruptcy Act [section 205 of former Title 11] on Nov. 6, 1978, in which the trustee had not filed a plan of reorganization, see section 403(b) of Pub. L. 95-598, set out preceding section 101 of this title.

Cross References

Allowance of administrative expenses, see section 503.

Priorities, see section 507.

Library References:

C.J.S. Bankruptcy §§ 250, 260, 353, 354.

West's Key No. Digests, Bankruptcy ☞2871, 2965.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1172. Contents of plan

(a) In addition to the provisions required or permitted under section 1123 of this title, a plan—

(1) shall specify the extent to and the means by which the debtor's rail service is proposed to be continued, and the extent to which any of the debtor's rail service is proposed to be terminated; and

(2) may include a provision for—

(A) the transfer of any or all of the operating railroad lines of the debtor to another operating railroad; or

(B) abandonment of any railroad line in accordance with section 1170 of this title.

(b) If, except for the pendency of the case under this chapter, transfer of, or operation of or over, any of the debtor's rail lines by an entity other than the debtor or a successor to the debtor under the plan would require approval by the Board under a law of the United States, then a plan may not propose such a transfer or such operation unless the proponent of the plan initiates an appropriate application for such a transfer or such operation with the Board and, within such time as the court may fix, not exceeding 180 days, the Board, with or without a hearing, as the Board may determine, and with or without modification or condition, approves such application, or does not act on such application. Any action or order of the Board approving, modifying, conditioning, or disapproving such application is subject to review by the court only under sections 706(2)(A), 706(2)(B), 706(2)(C), and 706(2)(D) of title 5.

(c)(1) In approving an application under subsection (b) of this section, the Board shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees as that established under section 11347 of title 49.

(2) Nothing in this subsection shall be deemed to affect the priorities or timing of payment of employee protection which might have existed in the absence of this subsection.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2644; Pub.L. 96-448, Title II, § 227(b), Oct. 14, 1980, 94 Stat. 1931; Pub.L. 104-88, Title III, § 302(2), Dec. 29, 1995, 109 Stat. 943.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 1170 [now this section] adds to the general provisions required or permitted in reorganization plans by section 1123. Subsection (1) requires that a reorganization plan under the railroad subchapter specify the means by which the value of the claims of creditors and the interests of equity holders which are materially and adversely affected by the plan are to be realized. Subsection (2) permits a plan to include provisions for the issuance of warrants. Subsection (3) requires that the plan provide for fixed charges by probable earnings for their payment. Subsection (4) requires that the plan specify the means by which, and the extent to which, the debtor's rail service is to be continued, and shall identify any rail service to be terminated. Subsection (5) permits other appropriate provisions not inconsistent with the chapter. With the exception of subsection (4), the requirements are comparable to those of present section 77(b) [former section 205(b) of this title] subsection (4) emphasizes the public interest in the preservation of rail transportation.

Notes of Committee on the Judiciary, House Report No. 95-595. A plan in a railroad reorganization case may include provisions in addition to those required and permitted under an ordinary reorganization plan. It may provide for the transfer of any or all of the operating railroad lines of the debtor to another operating railroad.

Paragraph (1) contemplates a liquidating plan for the debtor's rail lines, much as occurred in the Penn Central case by transfer of operating lines to Con Rail. Such a liquidating plan is not per se contrary to the public interest, and the court will have to determine on a case-by-case basis, with the guidance of the Interstate Commerce Commission and of other parties in interest, whether the particular plan proposed is in the public interest, as required under proposed 11 U.S.C. 1172(3).

The plan may also provide for abandonment in accordance with section 1169, governing abandonment generally. Neither of these provisions in a plan, transfer or abandonment of

lines, requires ICC approval. Confirmation of the plan by the court authorizes the debtor to comply with the plan in accordance with section 1142(a) notwithstanding any bankruptcy law to the contrary.

Legislative Statements. Section 1172 of the House amendment is derived from section 1171 of the House bill in preference to section 1170 of the Senate amendment with the exception that section 1170(4) of the Senate amendment is incorporated into section 1172(a)(1) of the House amendment.

Section 1172(b) of the House amendment is derived from section 1171(c) of the Senate amendment. The section gives the Interstate Commerce Commission the exclusive power to approve or disapprove the transfer of, or operation of or over, any of the debtor's rail lines over which the Commission has jurisdiction, subject to review under the Administrative Procedures Act [sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees]. The section does not apply to a transfer of railroad lines to a successor of the debtor under a plan of reorganization by merger or otherwise.

The House amendment deletes section 1171(a) of the Senate amendment as a matter to be determined by the Rules of Bankruptcy Procedure. It is anticipated that the rules will specify the period of time, such as 18 months, within which a trustee must file with the court a proposed plan of reorganization for the debtor or a report why a plan cannot be formulated. Incorporation by reference of section 1121 in section 1161 of title 11 means that a party in interest will also have a right to file a plan of reorganization. This differs from the position taken in the Senate amendment which would have permitted the Interstate Commerce Commission to file a plan of reorganization.

Effective Date of 1980 Amendment. Amendment by Pub.L. 96-448 effective Oct. 1, 1980, see section 710(a) of Pub.L. 96-448, set out as a note under section 10101 of Title 49, Transportation.

Cross References

Contents of plan filed in chapter 13 cases, see section 1322.

Library References:

C.J.S. Bankruptcy § 415.

West's Key No. Digests, Bankruptcy ☞3652.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1173. Confirmation of plan

(a) The court shall confirm a plan if—

(1) the applicable requirements of section 1129 of this title have been met;

(2) each creditor or equity security holder will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the value of property that each such creditor or equity security holder would so receive or retain if all of the operating railroad lines of the debtor were sold, and the proceeds of such sale, and the other property of the estate, were distributed under chapter 7 of this title on such date;

(3) in light of the debtor's past earnings and the probable prospective earnings of the reorganized debtor, there will be adequate coverage by such prospective earnings of any fixed charges, such as interest on debt, amortization of funded debt, and rent for leased railroads, provided for by the plan; and

(4) the plan is consistent with the public interest.

(b) If the requirements of subsection (a) of this section are met with respect to more than one plan, the court shall confirm the plan that is most likely to maintain adequate rail service in the public interest.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2644; Pub.L. 98-353, Title III, § 523, July 10, 1984, 98 Stat. 388.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 1173 adapts the provisions dealing with reorganization plans generally contained in section 1130 to the particular requirements of railroad reorganization plans, as set out in present section 77(e) [former section 205(e) of this title]. Subsection (a) specifies the findings which the court must make before approving a plan: (1) The plan complies with the applicable provisions of the chapter; (2) the proponent of the plan complies with the applicable provisions of the chapter; (3) the plan has been proposed in good faith; (4) any payments for services or for costs or expenses in connection with the case or the plan are disclosed to the court and are

reasonable, or, if to be paid later, are subject to the approval of the court as reasonable; (5) the proponent of the plan has disclosed the identity and affiliations of the individuals who will serve as directors, officers, or voting trustees, such appointments or continuations in office are consistent with the interests of creditors, equity security holders, and the proponent the public, and has disclosed the identity and compensation of any insider who will be employed or retained under the plan; (6) that rate changes proposed in the plan have been approved by the appropriate regulatory commission, or that the plan is contingent on such approval; (7) that confirmation of the plan is not likely to be followed by further reorganiza-

tion or liquidation, unless it is contemplated by the plan; (8) that the plan, if there is more than one, is the one most likely to maintain adequate rail service and (9) that the plan provides the priority traditionally accorded by section 77(b) [former section 205(b) of this title] to claims by rail creditors for necessary services rendered during the 6 months preceding the filing of the petition in bankruptcy.

Subsection (b) continues the present power of the court in section 77(e) [former section 205(e) of this title] to confirm a plan over the objections of creditors or equity security holders who are materially and adversely affected. The subsection also confirms the authority of the court to approve a transfer of all or part of a debtor's property or its merger over the objections of equity security holders if it finds (1) that the "public interest" in continued rail transportation outweighs any adverse effect on creditors and equity security holders, and (2) that the plan is fair and equitable, affords due recognition to the rights of each class, and does not discriminate unfairly against any class.

Subsection (c) permits modification of a plan confirmed by a final order only for fraud.

Notes of Committee on the Judiciary, House Report No. 95-595. This section requires the court to confirm a plan if the applicable requirements of section 1129 (relating to confirmation of reorganization plans generally) are met, if the best interest test is met, and if the plan is compatible with the public interest.

The test in this paragraph is similar to the test prescribed for ordinary corporate reorganizations. However, since a railroad cannot liquidate its assets and sell them for scrap to satisfy its creditors, the test focuses on the value of the railroad as a going concern. That is, the test is based on what the assets, sold as operating rail lines, would bring.

The public interest requirement, found in current law, will now be decided by the court, with the ICC [Interstate Commerce Commission] representing the public interest before the court, rather than in the first instance by the ICC. Liquidation of the debtor is not, per se, contrary to the public interest.

Legislative Statements. Section 1173 of the House amendment concerns confirmation of a plan of railroad reorganization and is derived from section 1172 of the House bill as modified. In particular, section 1173(a)(3) of the House amendment is derived from section 1170(3) of the Senate amendment. Section 1173(b) is derived from section 1173(a)(8) of the Senate amendment.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Confirmation of plan in

Chapter 9 cases, see section 943.

Chapter 13 cases, see section 1325.

Effect of confirmation in cases under this chapter, see section 1141.

Revocation of order of confirmation in cases under this chapter, see section 1144.

Unclaimed property, see section 347.

Library References:

C.J.S. Bankruptcy § 415.

West's Key No. Digests, Bankruptcy Ⓒ3652.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1174. Liquidation

On request of a party in interest and after notice and a hearing, the court may, or, if a plan has not been confirmed under section 1173 of this title before five years after the date of the order for relief, the court shall, order the trustee to

cease the debtor's operation and to collect and reduce to money all of the property of the estate in the same manner as if the case were a case under chapter 7 of this title.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2644.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 1174 permits the court to convert the case to a liquidation under chapter 7 if the court finds that the debtor cannot be reorganized, or if various time limits specified in the subchapter are not met. Section 77 [former section 205 of this title] does not authorize a liquidation of a railroad under the Bankruptcy Act. If the railroad is not reorganizable, the only action open to the court is to dismiss the petition, which would in all likelihood be followed by a State court receivership, with all of its attendant disadvantages. If reorganization is impossible, the debtor should be liquidated under the Bankruptcy Act.

Legislative Statements. Section 1174 of the House amendment represents a compromise between the House bill and Senate amendment on the issue of liquidation of a railroad. The provision permits a party in interest at any time to request liquidation. In

addition, if a plan has not been confirmed under section 1173 of the House amendment before 5 years after the date of order for relief, the court must order the trustee to cease the debtor's operation and to collect and reduce to money all of the property of the estate in the same manner as if the case were a case under chapter 7 of title 11. The approach differs from the conversion to chapter 7 under section 1174 of the Senate bill in order to make special provisions contained in subchapter IV of chapter 11 applicable to liquidation. However, maintaining liquidation in the context of chapter 11 is not intended to delay liquidation of the railroad to a different extent than if the case were converted to chapter 7.

Although the House amendment does not adopt provisions contained in sections 1170(1), (2), (3), or (5), of the Senate amendment such provisions are contained explicitly or implicitly in section 1123 of the House amendment.

Cross References

Conversion of

Chapter 7 cases, see section 706.

Chapter 11 cases, see section 1112.

Chapter 13 cases, see section 1307.

Dismissal of

Chapter 7 cases, see section 707.

Chapter 9 cases, see section 927.

Chapter 11 cases, see section 1112.

Chapter 13 cases, see section 1307.

Library References:

C.J.S. Bankruptcy § 387.

West's Key No. Digests, Bankruptcy ☞3651.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

CHAPTER 12—ADJUSTMENT OF DEBTS OF A FAMILY FARMER WITH REGULAR ANNUAL INCOME

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

Sec.

- 1201. Stay of action against codebtor.
- 1202. Trustee.
- 1203. Rights and powers of debtor.
- 1204. Removal of debtor as debtor in possession.
- 1205. Adequate protection.
- 1206. Sales free of interests.
- 1207. Property of the estate.
- 1208. Conversion or dismissal.

SUBCHAPTER II—THE PLAN

- 1221. Filing of plan.
- 1222. Contents of plan.
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- 1224. Confirmation hearing.
- 1225. Confirmation of plan.
- 1226. Payments.
- 1227. Effect of confirmation.
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- 1231. Special tax provisions.

Repeal of Chapter; Extension of Provisions

Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1, 1998, this chapter is repealed, but that all cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, shall be conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed. **For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.**

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, 99§§ 1, 2, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10, provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12, as reenacted under section

149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

§ 1201. Stay of action against codebtor

(a) Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless—

(1) such individual became liable on or secured such debt in the ordinary course of such individual's business; or

(2) the case is closed, dismissed, or converted to a case under chapter 7 of this title.

(b) A creditor may present a negotiable instrument, and may give notice of dishonor of such an instrument.

(c) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that—

(1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;

(2) the plan filed by the debtor proposes not to pay such claim; or

(3) such creditor's interest would be irreparably harmed by continuation of such stay.

(d) Twenty days after the filing of a request under subsection (c)(2) of this section for relief from the stay provided by subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the debtor or any individual that is liable on such debt with the debtor files and serves upon such party in interest a written objection to the taking of the proposed action.

(Added and amended Pub.L. 99-554, Title II, § 255, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3105, 3124; Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311; Pub.L. 105-277, Div. C, Title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub.L. 106-5, § 1(1),(2), Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10.)

Repeal of Chapter; Extension of Provisions

Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1,

1998, this chapter is repealed, but that all cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, shall be conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed. ***For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.***

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10, provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Historical and Revision Notes

Amendments

2001 Amendments. Pub. L. 107-8, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1, to extend effective date of repeal of this section to June 1, 2001, and so required no change in text.

1999 Amendments. Pub.L. 106-70, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2), to extend effective date of repeal of this section to July 1, 2000, and so required no change in text.

Pub.L. 106-5, § 1(1), (2), amended Pub.L. 105-277, Div. C, Title I, § 149, to extend effective date of repeal of this section to Oct. 1, 1999, and so required no change in text.

1998 Amendments. Pub.L. 105-277, § 149(a), temporarily reenacted this section, which had been repealed effective Oct. 1, 1998 by Pub.L. 99-554, § 302(f).

1993 Amendments. Pub.L. 103-65, § 1, amended Pub.L. 99-554, § 302(f), to extend effective date of repeal of this section to Oct. 1, 1998, and so required no change in text.

1986 Amendments. Pub.L. 99-554, § 302(f), as amended Pub.L. 103-65, § 1, repealed section effective Oct. 1, 1998. Prior to

amendment by Pub.L. 103-65, repeal of section was to have taken effect on Oct. 1, 1993.

Effective Dates

2001 Acts. Pub.L. 107-8, § 2, May 11, 2001, 115 Stat. 10, provided that: "The amendments make by section 1 [amending this section and sections 1202 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on July 1, 2000."

1999 Acts. Section 2 of Pub.L. 106-70 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on October 1, 1999."

Section 2 of Pub.L. 106-5 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on April 1, 1999."

1998 Acts. Section 149 of Pub.L. 105-277, as amended Pub.L. 106-5, § 1, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10, provided that:

“(a) Chapter 12 of title 11 of the United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is hereby reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001.

“(b) All cases commenced or pending under chapter 12 of title 11, United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as reenacted under subsection (a) [of this note], and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Library References:

C.J.S. Bankruptcy § 68.
West's Key No. Digests, Bankruptcy ⇨2396.

“(c) [Repealed. Pub.L. 106-5, § 1(3), March 30, 1999, 113 Stat. 9.]”

1993 Acts. Amendment by Pub.L. 103-65, extending to Oct. 1, 1998 the date of repeal of this chapter, to take effect Aug. 6, 1993.

1986 Acts. Section repealed effective Oct. 1, 1998, see section 302(f) of Pub.L. 99-554, as amended, set out in a note under section 581 of Title 28. However, for extension of provisions, see section 149 of Pub.L. 105-277.

Section effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

§ 1202. Trustee

(a) If the United States trustee has appointed an individual under section 586(b) of title 28 to serve as standing trustee in cases under this chapter and if such individual qualifies as a trustee under section 322 of this title, then such individual shall serve as trustee in any case filed under this chapter. Otherwise, the United States trustee shall appoint one disinterested person to serve as trustee in the case or the United States trustee may serve as trustee in the case if necessary.

(b) The trustee shall—

(1) perform the duties specified in sections 704(2), 704(3), 704(5), 704(6), 704(7), and 704(9) of this title;

(2) perform the duties specified in section 1106(a)(3) and 1106(a)(4) of this title if the court, for cause and on request of a party in interest, the trustee, or the United States trustee, so orders;

(3) appear and be heard at any hearing that concerns—

(A) the value of property subject to a lien;

(B) confirmation of a plan;

(C) modification of the plan after confirmation; or

(D) the sale of property of the estate;

(4) ensure that the debtor commences making timely payments required by a confirmed plan; and

(5) if the debtor ceases to be a debtor in possession, perform the duties specified in sections 704(8), 1106(a)(1), 1106(a)(2), 1106(a)(6), 1106(a)(7), and 1203.

Added and amended Pub.L. 99-554, Title II, §§ 227, 255, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3103, 3106, 3124; Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311; Pub.L. 105-277, Div. C, Title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub.L. 106-5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10.

Repeal of Chapter; Extension of Provisions

Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1, 1998, this chapter is repealed, but that all cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, shall be conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed. For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10, provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Historical and Revision Notes

Amendments

2001 Amendments. Pub.L. 107-8, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2); Pub.L. 106-70, § 1, to extend effective date of repeal of this section to June 1, 2001, and so required no change in text.

1999 Amendments. Pub.L. 106-70, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2), to extend effective date of repeal of this section to July 1, 2000, and so required no change in text.

Pub.L. 106-5, § 1(1), (2), amended Pub.L. 105-277, Div. C, Title I, § 149, to extend effective date of repeal of this section to Oct. 1, 1999, and so required no change in text.

1998 Amendments. Pub.L. 105-277, § 149(a), temporarily reenacted this section, which had been repealed effective Oct. 1, 1998 by Pub.L. 99-554, § 302(f).

1993 Amendments. Pub.L. 103-65, § 1, amended Pub.L. 99-554, § 302(f), to extend effective date of repeal of this section to Oct. 1, 1998, and so required no change in text.

1986 Amendments. Pub.L. 99-554, § 302(f), as amended Pub.L. 103-65, § 1, repealed section effective Oct. 1, 1998. Prior to amendment by Pub.L. 103-65, repeal of section was to have taken effect on Oct. 1, 1993.

Subsecs. (c) and (d). Pub.L. 99-554, § 227, struck out subsecs. (c) and (d) which read as follows:

“(c) If the number of cases under this chapter commenced in a particular judicial district

so warrants, the court may appoint one or more individuals to serve as standing trustee for such district in cases under this chapter.

“(d)(1) A court that has appointed an individual under subsection (a) of this section to serve as standing trustee in cases under this chapter shall set for such individual—

“(A) a maximum annual compensation not to exceed the lowest annual rate of basic pay in effect for grade GS-16 of the General Schedule prescribed under section 5332 of title 5; and

“(B) a percentage fee not to exceed the sum of—

“(i) not to exceed ten percent of the payments made under the plan of such debtor, with respect to payments in an aggregate amount not to exceed \$450,000; and

“(ii) three percent of payments made under the plan of such debtor, with respect to payments made after the aggregate amount of payments made under the plan exceeds \$450,000;

based on such maximum annual compensation and the actual, necessary expenses incurred by such individual as standing trustee.

“(2) Such individual shall collect such percentage fee from all payments under plans in the cases under this chapter for which such individual serves as standing trustee. Such individual shall pay annually to the Treasury—

“(A) any amount by which the actual compensation received by such individual exceeds five percent of all such payments made under plans in cases under this chapter for which such individual serves as standing trustee; and

“(B) any amount by which the percentage fee fixed under paragraph (1)(B) of this subsection for all such cases exceeds—

“(i) such individual’s actual compensation for such cases, as adjusted under subparagraph (A) of this paragraph; plus

“(ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases.”.

Effective Dates

2001 Acts. Amendment by Pub.L. 107-8, extending to June 1, 2001, the date of repeal of this chapter, to take effect July 1, 2000, see

section 2 of Pub.L. 107-8, set out as a note under section 1201 of this title.

1999 Acts. Amendment by Pub.L. 106-70, extending to July 1, 2000, the date of repeal of this chapter, to take effect Oct. 1, 1999, see section 2 of Pub.L. 106-70.

Amendment by Pub.L. 106-5, extending to Oct. 1, 1999 the date of repeal of this chapter, to take effect Apr. 1, 1999, see section 2 of Pub.L. 106-5.

1998 Acts. Section reenacted, eff. Oct. 1, 1998, for the period beginning on Oct. 1, 1998, and ending on Apr. 1, 1999, but all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, to be conducted and determined under such chapter as if such chapter were continued in effect after Apr. 1, 1999, and the substantive rights of parties in connection with such cases, matters, and proceedings to continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after Apr. 1, 1999, see section 149 of Pub.L. 105-277.

1993 Acts. Amendment by Pub.L. 103-65, extending to Oct. 1, 1998 the date of repeal of this chapter, to take effect Aug. 6, 1993, see section 3 of Pub.L. 103-65.

1986 Acts. Section repealed effective Oct. 1, 1998, see section 302(f) of Pub.L. 99-554, as amended, set out in a note under section 581 of Title 28. However, for extension of provisions, see section 149 of Pub.L. 105-277.

Enactment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Enactment by Pub.L. 99-554, § 255, not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Enactment by section 255 of Pub.L. 99-554 to take effect 30 days after Oct. 27, 1986, and before amendment made by section 227 of Pub.L. 99-554, striking out subsecs. (c) and (d) of this section, see section 302(c)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 227, not to become effective in or with respect to certain

specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 227, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 227, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the

election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by section 201 to 231 of Pub.L. 99-554 becomes effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 227, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

References in Subsection (a) Temporarily Deemed to be References to Other Provisions

Until the amendments made by subtitle A (sections 201 to 231) of Title II of Pub.L. 99-554 become effective in a district and apply to a case, in subsec. (a) of this section—

(1) the first two references to the United States trustee are deemed to be references to the court, and

(2) any reference to section 586(b) of Title 28, Judiciary and Judicial Procedure, is deemed to be a reference to subsec. (c) of this section,

see section 302(c)(3)(B), (d), (e) of Pub.L. 99-554, set out as an Effective Date note under section 581 of Title 28.

Library References:

C.J.S. Bankruptcy § 417.
West's Key No. Digests, Bankruptcy ☞3672.

§ 1203. Rights and powers of debtor

Subject to such limitations as the court may prescribe, a debtor in possession shall have all the rights, other than the right to compensation under section 330,

and powers, and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm.

Added and amended Pub.L. 99-554, Title II, § 255, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3107, 3124; Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311; Pub.L. 105-277, Div. C, Title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub.L. 106-5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10.

Repeal of Chapter; Extension of Provisions

Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1, 1998, this chapter is repealed, but that all cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, shall be conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed. For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10, provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Historical and Revision Notes

Amendments

2001 Amendments. Pub.L. 107-8, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2); Pub.L. 106-70, § 1, to extend effective date of repeal of this section to June 1, 2001, and so required no change in text.

1999 Amendments. Pub.L. 106-70, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2), to extend effective date of repeal of this section to July 1, 2000, and so required no change in text.

Pub.L. 106-5, § 1(1), (2), amended Pub.L. 105-277, Div. C, Title I, § 149, to extend effective

date of repeal of this section to Oct. 1, 1999, and so required no change in text.

1998 Amendments. Pub.L. 105-277, § 149(a), temporarily reenacted this section, which had been repealed effective Oct. 1, 1998 by Pub.L. 99-554, § 302(f).

1993 Amendments. Pub.L. 103-65, § 1, amended Pub.L. 99-554, § 302(f), to extend effective date of repeal of this section to Oct. 1, 1998, and so required no change in text.

1986 Amendments. Pub.L. 99-554, § 302(f), as amended Pub.L. 103-65, § 1, repealed section effective Oct. 1, 1998. Prior to amendment by Pub.L. 103-65, repeal of section was to have taken effect on Oct. 1, 1993.

Effective Dates

2001 Acts. Amendment by Pub.L. 107-8, extending to June 1, 2001, the date of repeal of this chapter, to take effect July 1, 2000, see section 2 of Pub.L. 107-8, set out as a note under section 1201 of this title.

1999 Acts. Section 2 of Pub.L. 106-70 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on October 1, 1999."

Section 2 of Pub.L. 106-5 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on April 1, 1999."

1998 Acts. Section 149 of Pub.L. 105-277, as amended Pub.L. 106-5, § 1, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031, provided that:

"(a) Chapter 12 of title 11 of the United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on September 30, 1999, is hereby reenacted for the period beginning on October 1, 1999, and ending on July 1, 2000.

"(b) All cases commenced or pending under chapter 12 of title 11, United States Code [this

chapter; 11 U.S.C.A. § 1201 et seq.], as reenacted under subsection (a) [of this note], and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after July 1, 2000. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after July 1, 2000.

"(c) [Repealed. Pub.L. 106-5, § 1(3), March 30, 1999, 113 Stat. 9.]"

1993 Acts. Amendment by Pub.L. 103-65, extending to Oct. 1, 1998 the date of repeal of this chapter, to take effect Aug. 6, 1993.

1986 Acts. Section repealed effective Oct. 1, 1998, see section 302(f) of Pub.L. 99-554, as amended, set out in a note under section 581 of Title 28. However, for extension of provisions, see section 149 of Pub.L. 105-277.

Section effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy § 417.

West's Key No. Digests, Bankruptcy ⇨3672.

§ 1204. Removal of debtor as debtor in possession

(a) On request of a party in interest, and after notice and a hearing, the court shall order that the debtor shall not be a debtor in possession for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the commencement of the case.

(b) On request of a party in interest, and after notice and a hearing, the court may reinstate the debtor in possession.

Added and amended Pub.L. 99-554, Title II, § 255, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3107, 3124; Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311; Pub.L. 105-277, Div. C, Title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub.L. 106-5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10.

Repeal of Chapter; Extension of Provisions

Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1, 1998, this chapter is repealed, but that all cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, shall be

conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed. For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10, provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Historical and Revision Notes

Amendments

2001 Amendments. Pub.L. 107-8, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2); Pub.L. 106-70, § 1, to extend effective date of repeal of this section to June 1, 2001, and so required no change in text.

1999 Amendments. Pub.L. 106-70, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2), to extend effective date of repeal of this section to July 1, 2000, and so required no change in text.

Pub.L. 106-5, § 1(1), (2), amended Pub.L. 105-277, Div. C, Title I, § 149, to extend effective date of repeal of this section to Oct. 1, 1999, and so required no change in text.

1998 Amendments. Pub.L. 105-277, § 149(a), temporarily reenacted this section, which had been repealed effective Oct. 1, 1998 by Pub.L. 99-554, § 302(f).

1993 Amendments. Pub.L. 103-65, § 1, amended Pub.L. 99-554, § 302(f), to extend effective date of repeal of this section to Oct. 1, 1998, and so required no change in text.

1986 Amendments. Pub.L. 99-554, § 302(f), as amended Pub.L. 103-65, § 1, repealed section effective Oct. 1, 1998. Prior to amendment by Pub.L. 103-65, repeal of section was to have taken effect on Oct. 1, 1993.

Effective Dates

2001 Acts. Amendment by Pub.L. 107-8, extending to June 1, 2001, the date of repeal of this chapter, to take effect July 1, 2000, see section 2 of Pub.L. 107-8, set out as a note under section 1201 of this title

1999 Acts. Section 2 of Pub.L. 106-70 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on October 1, 1999."

Section 2 of Pub.L. 106-5 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on April 1, 1999."

1998 Acts. Section 149 of Pub.L. 105-277, as amended Pub.L. 106-5, § 1, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031, provided that:

"(a) Chapter 12 of title 11 of the United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on September 30, 1999, is hereby reenacted for the period beginning on October 1, 1999, and ending on July 1, 2000.

"(b) All cases commenced or pending under chapter 12 of title 11, United States Code [this

chapter; 11 U.S.C.A. § 1201 et seq.), as reenacted under subsection (a) [of this note], and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after July 1, 2000. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after July 1, 2000.

“(c) [Repealed. Pub.L. 106-5, § 1(3), March 30, 1999, 113 Stat. 9.]”

1993 Acts. Amendment by Pub.L. 103-65, extending to Oct. 1, 1998 the date of repeal of this chapter, to take effect Aug. 6, 1993.

1986 Acts. Section repealed effective Oct. 1, 1998, see section 302(f) of Pub.L. 99-554, as amended, set out in a note under section 581 of Title 28. However, for extension of provisions, see section 149 of Pub.L. 105-277.

Section effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy § 417.
West's Key No. Digests, Bankruptcy ☞3672.

§ 1205. Adequate protection

(a) Section 361 does not apply in a case under this chapter.

(b) In a case under this chapter, when adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by—

(1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of property securing a claim or of an entity's ownership interest in property;

(2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of property securing a claim or of an entity's ownership interest in property;

(3) paying to such entity for the use of farmland the reasonable rent customary in the community where the property is located, based upon the rental value, net income, and earning capacity of the property; or

(4) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will adequately protect the value of property securing a claim or of such entity's ownership interest in property.

Added and amended Pub.L. 99-554, Title II, § 255, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3107, 3124; Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311; Pub.L. 105-277, Div. C, Title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub.L. 106-5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10.

Repeal of Chapter; Extension of Provisions

Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1, 1998, this chapter is repealed, but that all cases commenced or pending under this

chapter, and all matters and proceedings in or relating to such cases, shall be conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed. For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10, provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Historical and Revision Notes

Amendments

2001 Amendments. Pub.L. 107-8, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2); Pub.L. 106-70, § 1, to extend effective date of repeal of this section to June 1, 2001, and so required no change in text.

1999 Amendments. Pub.L. 106-70, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2), to extend effective date of repeal of this section to July 1, 2000, and so required no change in text.

Pub.L. 106-5, § 1(1), (2), amended Pub.L. 105-277, Div. C, Title I, § 149, to extend effective date of repeal of this section to Oct. 1, 1999, and so required no change in text.

1998 Amendments. Pub.L. 105-277, § 149(a), temporarily reenacted this section, which had been repealed effective Oct. 1, 1998 by Pub.L. 99-554, § 302(f).

1993 Amendments. Pub.L. 103-65, § 1, amended Pub.L. 99-554, § 302(f), to extend effective date of repeal of this section to Oct. 1, 1998, and so required no change in text.

1986 Amendments. Pub.L. 99-554, § 302(f), as amended Pub.L. 103-65, § 1, repealed section effective Oct. 1, 1998. Prior to

amendment by Pub.L. 103-65, repeal of section was to have taken effect on Oct. 1, 1993.

Effective Dates

2001 Acts. Amendment by Pub.L. 107-8, extending to June 1, 2001, the date of repeal of this chapter, to take effect July 1, 2000, see section 2 of Pub.L. 107-8, set out as a note under section 1201 of this title.

1999 Acts. Section 2 of Pub.L. 106-70 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on October 1, 1999."

Section 2 of Pub.L. 106-5 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on April 1, 1999."

1998 Acts. Section 149 of Pub.L. 105-277, as amended Pub.L. 106-5, § 1, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031, provided that:

"(a) Chapter 12 of title 11 of the United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on September 30, 1999, is hereby reenacted for the period beginning on October 1, 1999, and ending on July 1, 2000.

“(b) All cases commenced or pending under chapter 12 of title 11, United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as reenacted under subsection (a) [of this note], and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after July 1, 2000. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after July 1, 2000.

“(c) [Repealed. Pub.L. 106-5, § 1(3), March 30, 1999, 113 Stat. 9.]”

Library References:

C.J.S. Bankruptcy §§ 86-88, 186, 200, 208, 209.

West's Key No. Digests, Bankruptcy ⇨2430(1)-2434, 3035.1, 3065, 3073.

1993 Acts. Amendment by Pub.L. 103-65, extending to Oct. 1, 1998 the date of repeal of this chapter, to take effect Aug. 6, 1993.

1986 Acts. Section repealed effective Oct. 1, 1998, see section 302(f) of Pub.L. 99-554, as amended, set out in a note under section 581 of Title 28. However, for extension of provisions, see section 149 of Pub.L. 105-277.

Section effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

§ 1206. Sales free of interests

After notice and a hearing, in addition to the authorization contained in section 363(f), the trustee in a case under this chapter may sell property under section 363(b) and (c) free and clear of any interest in such property of an entity other than the estate if the property is farmland or farm equipment, except that the proceeds of such sale shall be subject to such interest.

Added and amended Pub.L. 99-554, Title II, § 255, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3108, 3124; Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311; Pub.L. 105-277, Div. C, Title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub.L. 106-5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10.

Repeal of Chapter; Extension of Provisions

*Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1, 1998, this chapter is repealed, but that all cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, shall be conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed. **For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.***

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10, provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall

be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Historical and Revision Notes

Amendments

2001 Amendments. Pub.L. 107-8, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2); Pub.L. 106-70, § 1, to extend effective date of repeal of this section to June 1, 2001, and so required no change in text.

1999 Amendments. Pub.L. 106-70, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2), to extend effective date of repeal of this section to July 1, 2000, and so required no change in text.

Pub.L. 106-5, § 1(1), (2), amended Pub.L. 105-277, Div. C, Title I, § 149, to extend effective date of repeal of this section to Oct. 1, 1999, and so required no change in text.

1998 Amendments. Pub.L. 105-277, § 149(a), temporarily reenacted this section, which had been repealed effective Oct. 1, 1998 by Pub.L. 99-554, § 302(f).

1993 Amendments. Pub.L. 103-65, § 1, amended Pub.L. 99-554, § 302(f), to extend effective date of repeal of this section to Oct. 1, 1998, and so required no change in text.

1986 Amendments. Pub.L. 99-554, § 302(f), as amended Pub.L. 103-65, § 1, repealed section effective Oct. 1, 1998. Prior to amendment by Pub.L. 103-65, repeal of section was to have taken effect on Oct. 1, 1993.

Effective Dates

2001 Acts. Amendment by Pub.L. 107-8, extending to June 1, 2001, the date of repeal of this chapter, to take effect July 1, 2000, see section 2 of Pub.L. 107-8, set out as a note under section 1201 of this title.

1999 Acts. Section 2 of Pub.L. 106-70 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on October 1, 1999."

Section 2 of Pub.L. 106-5 provided that: "The amendments made by section 1 [amend-

ing sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on April 1, 1999."

1998 Acts. Section 149 of Pub.L. 105-277, as amended Pub.L. 106-5, § 1, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031, provided that:

"(a) Chapter 12 of title 11 of the United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on September 30, 1999, is hereby reenacted for the period beginning on October 1, 1999, and ending on July 1, 2000.

"(b) All cases commenced or pending under chapter 12 of title 11, United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as reenacted under subsection (a) [of this note], and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after July 1, 2000. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after July 1, 2000.

"(c) [Repealed. Pub.L. 106-5, § 1(3), March 30, 1999, 113 Stat. 9]."

1993 Acts. Amendment by Pub.L. 103-65, extending to Oct. 1, 1998 the date of repeal of this chapter, to take effect Aug. 6, 1993.

1986 Acts. Section repealed effective Oct. 1, 1998, see section 302(f) of Pub.L. 99-554, as amended, set out in a note under section 581 of Title 28. However, for extension of provisions, see section 149 of Pub.L. 105-277.

Section effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy §§ 208, 209.

West's Key No. Digests, Bankruptcy Ⓒ3073.

§ 1207. Property of the estate

(a) Property of estate includes, in addition to the property specified in section 541 of this title—

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7 of this title, whichever occurs first.

(b) Except as provided in section 1204, a confirmed plan, or an order confirming a plan, the debtor shall remain in possession of all property of the estate.

Added and amended Pub.L. 99-554, Title II, § 255, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3108, 3124; Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311; Pub.L. 105-277, Div. C, Title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub.L. 106-5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10.

Repeal of Chapter; Extension of Provisions

Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1, 1998, this chapter is repealed, but that all cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, shall be conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed. For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10, provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Historical and Revision Notes

Amendments

2001 Amendments. Pub.L. 107-8, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2); Pub.L. 106-70, § 1, to extend effective date of repeal of this section to June 1, 2001, and so required no change in text.

1999 Amendments. Pub.L. 106-70, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2), to extend effective date of repeal of this section to July 1, 2000, and so required no change in text.

Pub.L. 106-5, § 1(1), (2), amended Pub.L. 105-277, Div. C, Title I, § 149, to extend effective date of repeal of this section to Oct. 1, 1999, and so required no change in text.

1998 Amendments. Pub.L. 105-277, § 149(a), temporarily reenacted this section, which had been repealed effective Oct. 1, 1998 by Pub.L. 99-554, § 302(f).

1993 Amendments. Pub.L. 103-65, § 1, amended Pub.L. 99-554, § 302(f), to extend effective date of repeal of this section to Oct. 1, 1998, and so required no change in text.

1986 Amendments. Pub.L. 99-554, § 302(f), as amended Pub.L. 103-65, § 1, repealed section effective Oct. 1, 1998. Prior to amendment by Pub.L. 103-65, repeal of section was to have taken effect on Oct. 1, 1993.

Effective Dates

2001 Acts. Amendment by Pub.L. 107-8, extending to June 1, 2001, the date of repeal of this chapter, to take effect July 1, 2000, see section 2 of Pub.L. 107-8, set out as a note under section 1201 of this title.

1999 Acts. Section 2 of Pub.L. 106-70 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on October 1, 1999."

Library References:

C.J.S. Bankruptcy §§ 120, 122.

West's Key No. Digests, Bankruptcy ☞2558.

Section 2 of Pub.L. 106-5 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on April 1, 1999."

1998 Acts. Section 149 of Pub.L. 105-277, as amended Pub.L. 106-5, § 1, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031, provided that:

"(a) Chapter 12 of title 11 of the United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on September 30, 1999, is hereby reenacted for the period beginning on October 1, 1999, and ending on July 1, 2000.

"(b) All cases commenced or pending under chapter 12 of title 11, United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as reenacted under subsection (a) [of this note], and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after July 1, 2000. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after July 1, 2000.

"(c) [Repealed. Pub.L. 106-5, § 1(3), March 30, 1999, 113 Stat. 9.]"

1993 Acts. Amendment by Pub.L. 103-65, extending to Oct. 1, 1998 the date of repeal of this chapter, to take effect Aug. 6, 1993.

1986 Acts. Section repealed effective Oct. 1, 1998, see section 302(f) of Pub.L. 99-554, as amended, set out in a note under section 581 of Title 28. However, for extension of provisions, see section 149 of Pub.L. 105-277.

Section effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

§ 1208. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable.

(b) On request of the debtor at any time, if the case has not been converted under section 706 or 1112 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

(c) On request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including—

(1) unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors;

(2) nonpayment of any fees and charges required under chapter 123 of title 28;

(3) failure to file a plan timely under section 1221 of this title;

(4) failure to commence making timely payments required by a confirmed plan;

(5) denial of confirmation of a plan under section 1225 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;

(6) material default by the debtor with respect to a term of a confirmed plan;

(7) revocation of the order of confirmation under section 1230 of this title, and denial of confirmation of a modified plan under section 1229 of this title;

(8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; or

(9) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation.

(d) On request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter or convert a case under this chapter to a case under chapter 7 of this title upon a showing that the debtor has committed fraud in connection with the case.

(e) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

Added and amended Pub.L. 99-554, Title II, § 255, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3108, 3124; Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311; Pub.L. 105-277, Div. C, Title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub.L. 106-5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10.

Repeal of Chapter; Extension of Provisions

Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1, 1998, this chapter is repealed, but that all cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, shall be conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed.

For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10, provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Historical and Revision Notes

Amendments

2001 Amendments. Pub.L. 107-8, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2); Pub.L. 106-70, § 1, to extend effective date of repeal of this section to June 1, 2001, and so required no change in text.

1999 Amendments. Pub.L. 106-70, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2), to extend effective date of repeal of this section to July 1, 2000, and so required no change in text.

Pub.L. 106-5, § 1(1), (2), amended Pub.L. 105-277, Div. C, Title I, § 149, to extend effective date of repeal of this section to Oct. 1, 1999, and so required no change in text.

1998 Amendments. Pub.L. 105-277, § 149(a), temporarily reenacted this section, which had been repealed effective Oct. 1, 1998 by Pub.L. 99-554, § 302(f).

1993 Amendments. Pub.L. 103-65, § 1, amended Pub.L. 99-554, § 302(f), to extend effective date of repeal of this section to Oct. 1, 1998, and so required no change in text.

1986 Amendments. Pub.L. 99-554, § 302(f), as amended Pub.L. 103-65, § 1, repealed section effective Oct. 1, 1998. Prior to amendment by Pub.L. 103-65, repeal of section was to have taken effect on Oct. 1, 1993.

Effective Dates

2001 Acts. Amendment by Pub.L. 107-8, extending to June 1, 2001, the date of repeal of this chapter, to take effect July 1, 2000, see

section 2 of Pub.L. 107-8, set out as a note under section 1201 of this title.

1999 Acts. Section 2 of Pub.L. 106-70 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on October 1, 1999."

Section 2 of Pub.L. 106-5 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on April 1, 1999."

1998 Acts. Section 149 of Pub.L. 105-277, as amended Pub.L. 106-5, § 1, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031, provided that:

"(a) Chapter 12 of title 11 of the United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on September 30, 1999, is hereby reenacted for the period beginning on October 1, 1999, and ending on July 1, 2000.

"(b) All cases commenced or pending under chapter 12 of title 11, United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as reenacted under subsection (a) [of this note], and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after July 1, 2000. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if

such chapter were continued in effect after July 1, 2000.

“(c) [Repealed. Pub.L. 106-5, § 1(3), March 30, 1999, 113 Stat. 9.]”

1993 Acts. Amendment by Pub.L. 103-65, extending to Oct. 1, 1998 the date of repeal of this chapter, to take effect Aug. 6, 1993.

1986 Acts. Section repealed effective Oct. 1, 1998, see section 302(f) of Pub.L. 99-554, as

amended, set out in a note under section 581 of Title 28. However, for extension of provisions, see section 149 of Pub.L. 105-277.

Section effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28. Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy § 418.

West's Key No. Digests, Bankruptcy ☞3673.

SUBCHAPTER II—THE PLAN

§ 1221. Filing of plan

The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend such period if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.

Added and amended Pub.L. 99-554, Title II, § 255, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3109, 3124; Pub.L. 103-65, §§ 1, 2, Aug. 6, 1993, 107 Stat. 311; Pub.L. 105-277, Div. C, Title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub.L. 106-5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10.

Repeal of Chapter; Extension of Provisions

Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1, 1998, this chapter is repealed, but that all cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, shall be conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed. For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10, provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12. as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the

law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Historical and Revision Notes

Amendments

2001 Amendments. Pub.L. 107-8, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2); Pub.L. 106-70, § 1, to extend effective date of repeal of this section to June 1, 2001, and so required no change in text.

1999 Amendments. Pub.L. 106-70, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2), to extend effective date of repeal of this section to July 1, 2000, and so required no change in text.

Pub.L. 106-5, § 1(1), (2), amended Pub.L. 105-277, Div. C, Title I, § 149, to extend effective date of repeal of this section to Oct. 1, 1999, and so required no change in text.

1998 Amendments. Pub.L. 105-277, § 149(a), temporarily reenacted this section, which had been repealed effective Oct. 1, 1998 by Pub.L. 99-554, § 302(f).

1993 Amendments. Pub.L. 103-65, § 1, amended Pub.L. 99-554, § 302(f), to extend effective date of repeal of this section to Oct. 1, 1998, and so required no change in text.

1986 Amendments. Pub.L. 99-554, § 302(f), as amended Pub.L. 103-65, § 1, repealed section effective Oct. 1, 1998. Prior to amendment by Pub.L. 103-65, repeal of section was to have taken effect on Oct. 1, 1993.

Effective Dates

2001 Acts. Amendment by Pub.L. 107-8, extending to June 1, 2001, the date of repeal of this chapter, to take effect July 1, 2000, see section 2 of Pub.L. 107-8, set out as a note under section 1201 of this title.

1999 Acts. Section 2 of Pub.L. 106-70 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on October 1, 1999."

Section 2 of Pub.L. 106-5 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on April 1, 1999."

1998 Acts. Section 149 of Pub.L. 105-277, as amended Pub.L. 106-5, § 1, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031, provided that:

"(a) Chapter 12 of title 11 of the United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on September 30, 1999, is hereby reenacted for the period beginning on October 1, 1999, and ending on July 1, 2000.

"(b) All cases commenced or pending under chapter 12 of title 11, United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as reenacted under subsection (a) [of this note], and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after July 1, 2000. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after July 1, 2000.

"(c) [Repealed. Pub.L. 106-5, § 1(3), March 30, 1999, 113 Stat. 9.]"

1993 Acts. Amendment by Pub.L. 103-65, extending to Oct. 1, 1998 the date of repeal of this chapter, to take effect Aug. 6, 1993.

1986 Acts. Section repealed effective Oct. 1, 1998, see section 302(f) of Pub.L. 99-554, as amended, set out in a note under section 581 of Title 28. However, for extension of provisions, see section 149 of Pub.L. 105-277.

Section effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy §§ 419, 420.
West's Key No. Digests, Bankruptcy C=3681.

§ 1222. Contents of plan

(a) The plan shall—

(1) provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; and

(3) if the plan classifies claims and interests, provide the same treatment for each claim or interest within a particular class unless the holder of a particular claim or interest agrees to less favorable treatment.

(b) Subject to subsections (a) and (c) of this section, the plan may—

(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;

(2) modify the rights of holders of secured claims, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

(3) provide for the curing or waiving of any default;

(4) provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claim;

(5) provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

(6) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

(7) provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor;

(8) provide for the sale of all or any part of the property of the estate or the distribution of all or any part of the property of the estate among those having an interest in such property;

(9) provide for payment of allowed secured claims consistent with section 1225(a)(5) of this title, over a period exceeding the period permitted under section 1222(c);

(10) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity; and

(11) include any other appropriate provision not inconsistent with this title.

(c) Except as provided in subsections (b)(5) and (b)(9), the plan may not provide for payments over a period that is longer than three years unless the court

for cause approves a longer period, but the court may not approve a period that is longer than five years.

(d) Notwithstanding subsection (b)(2) of this section and sections 506(b) and 1225(a)(5) of this title, if it is proposed in a plan to cure a default, the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

Added and amended Pub.L. 99-554, Title II, § 255, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3109, 3124; Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311; Pub.L. 103-394, Title III, § 305(b), Oct. 22, 1994, 108 Stat. 4134; Pub.L. 105-277, Div. C, Title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub.L. 106-5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10.

Repeal of Chapter; Extension of Provisions

Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1, 1998, this chapter is repealed, but that all cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, shall be conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed. For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10, provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Historical and Revision Notes

Amendments

2001 Amendments. Pub.L. 107-8, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2); Pub.L. 106-70, § 1, to extend effective date of repeal of this section to June 1, 2001, and so required no change in text.

1999 Amendments. Pub.L. 106-70, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5,

§ 1(1), (2), to extend effective date of repeal of this section to July 1, 2000, and so required no change in text.

Pub.L. 106-5, § 1(1), (2), amended Pub.L. 105-277, Div. C, Title I, § 149, to extend effective date of repeal of this section to Oct. 1, 1999, and so required no change in text.

1998 Amendments. Pub.L. 105-277, § 149(a), temporarily reenacted this section,

which had been repealed effective Oct. 1, 1998 by Pub.L. 99-554, § 302(f).

1993 Amendments. Pub.L. 103-65, § 1, amended Pub.L. 99-554, § 302(f), to extend effective date of repeal of this section to Oct. 1, 1998, and so required no change in text.

1986 Amendments. Pub.L. 99-554, § 302(f), as amended Pub.L. 103-65, § 1, repealed section effective Oct. 1, 1998. Prior to amendment by Pub.L. 103-65, repeal of section was to have taken effect on Oct. 1, 1993.

Effective Dates

2001 Acts. Amendment by Pub.L. 107-8, extending to June 1, 2001, the date of repeal of this chapter, to take effect July 1, 2000, see section 2 of Pub.L. 107-8, set out as a note under section 1201 of this title.

1999 Acts. Section 2 of Pub.L. 106-70 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on October 1, 1999."

Section 2 of Pub.L. 106-5 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on April 1, 1999."

1998 Acts. Section 149 of Pub.L. 105-277, as amended Pub.L. 106-5, § 1, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031, provided that:

Library References:

C.J.S. Bankruptcy §§ 419, 421-425, 427, 430.
West's Key No. Digests, Bankruptcy Ⓒ3682.

§ 1223. Modification of plan before confirmation

(a) The debtor may modify the plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of section 1222 of this title.

(b) After the debtor files a modification under this section, the plan as modified becomes the plan.

(c) Any holder of a secured claim that has accepted or rejected the plan is deemed to have accepted or rejected, as the case may be, the plan as modified, unless the modification provides for a change in the rights of such holder from what such rights were under the plan before modification, and such holder changes such holder's previous acceptance or rejection.

Added and amended Pub.L. 99-554, Title II, § 255, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3110, 3124; Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311;

"(a) Chapter 12 of title 11 of the United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on September 30, 1999, is hereby reenacted for the period beginning on October 1, 1999, and ending on July 1, 2000.

"(b) All cases commenced or pending under chapter 12 of title 11, United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as reenacted under subsection (a) [of this note], and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after July 1, 2000. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after July 1, 2000.

"(c) [Repealed. Pub.L. 106-5, § 1(3), March 30, 1999, 113 Stat. 9.]"

1993 Acts. Amendment by Pub.L. 103-65, extending to Oct. 1, 1998 the date of repeal of this chapter, to take effect Aug. 6, 1993.

1986 Acts. Section repealed effective Oct. 1, 1998, see section 302(f) of Pub.L. 99-554, as amended, set out in a note under section 581 of Title 28. However, for extension of provisions, see section 149 of Pub.L. 105-277.

Section effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Pub.L. 105-277, Div. C, Title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub.L. 106-5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10.

Repeal of Chapter; Extension of Provisions

Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1, 1998, this chapter is repealed, but that all cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, shall be conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed. For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10, provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Historical and Revision Notes

Amendments

2001 Amendments. Pub.L. 107-8, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2); Pub.L. 106-70, § 1, to extend effective date of repeal of this section to June 1, 2001, and so required no change in text.

1999 Amendments. Pub.L. 106-70, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2), to extend effective date of repeal of this section to July 1, 2000, and so required no change in text.

Pub.L. 106-5, § 1(1), (2), amended Pub.L. 105-277, Div. C, Title I, § 149, to extend effective date of repeal of this section to Oct. 1, 1999, and so required no change in text.

1998 Amendments. Pub.L. 105-277, § 149(a), temporarily reenacted this section,

which had been repealed effective Oct. 1, 1998 by Pub.L. 99-554, § 302(f).

1993 Amendments. Pub.L. 103-65, § 1, amended Pub.L. 99-554, § 302(f), to extend effective date of repeal of this section to Oct. 1, 1998, and so required no change in text.

1986 Amendments. Pub.L. 99-554, § 302(f), as amended Pub.L. 103-65, § 1, repealed section effective Oct. 1, 1998. Prior to amendment by Pub.L. 103-65, repeal of section was to have taken effect on Oct. 1, 1993.

Effective Dates

2001 Acts. Amendment by Pub.L. 107-8, extending to June 1, 2001, the date of repeal of this chapter, to take effect July 1, 2000, see section 2 of Pub.L. 107-8, set out as a note under section 1201 of this title.

1999 Acts. Section 2 of Pub.L. 106-70 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set

out as a note under this section] shall take effect on October 1, 1999.”

Section 2 of Pub.L. 106-5 provided that: “The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on April 1, 1999.”

1998 Acts. Section 149 of Pub.L. 105-277, as amended Pub.L. 106-5, § 1, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031, provided that:

“(a) Chapter 12 of title 11 of the United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on September 30, 1999, is hereby reenacted for the period beginning on October 1, 1999, and ending on July 1, 2000.

“(b) All cases commenced or pending under chapter 12 of title 11, United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as reenacted under subsection (a) [of this note], and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were

continued in effect after July 1, 2000. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after July 1, 2000

“(c) [Repealed. Pub.L. 106-5, § 1(3), March 30, 1999, 113 Stat. 9.]”

1993 Acts. Amendment by Pub.L. 103-65, extending to Oct. 1, 1998 the date of repeal of this chapter, to take effect Aug. 6, 1993.

1986 Acts. Section repealed effective Oct. 1, 1998, see section 302(f) of Pub.L. 99-554, as amended, set out in a note under section 581 of Title 28. However, for extension of provisions, see section 149 of Pub.L. 105-277.

Section effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy §§ 419, 421-425, 427, 430.
West's Key No. Digests, Bankruptcy Ⓒ3682.

§ 1224. Confirmation hearing

After expedited notice, the court shall hold a hearing on confirmation of the plan. A party in interest, the trustee, or the United States trustee may object to the confirmation of the plan. Except for cause, the hearing shall be concluded not later than 45 days after the filing of the plan.

Added and amended Pub.L. 99-554, Title II, § 255, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3110, 3124; Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311; Pub.L. 105-277, Div. C, Title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub.L. 106-5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10.

Repeal of Chapter; Extension of Provisions

Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1, 1998, this chapter is repealed, but that all cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, shall be conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed. For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10, provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Historical and Revision Notes

Amendments

2001 Amendments. Pub.L. 107-8, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2); Pub.L. 106-70, § 1, to extend effective date of repeal of this section to June 1, 2001, and so required no change in text.

1999 Amendments. Pub.L. 106-70, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2), to extend effective date of repeal of this section to July 1, 2000, and so required no change in text.

Pub.L. 106-5, § 1(1), (2), amended Pub.L. 105-277, Div. C, Title I, § 149, to extend effective date of repeal of this section to Oct. 1, 1999, and so required no change in text.

1998 Amendments. Pub.L. 105-277, § 149(a), temporarily reenacted this section, which had been repealed effective Oct. 1, 1998 by Pub.L. 99-554, § 302(f).

1993 Amendments. Pub.L. 103-65, § 1, amended Pub.L. 99-554, § 302(f), to extend effective date of repeal of this section to Oct. 1, 1998, and so required no change in text.

1986 Amendments. Pub.L. 99-554, § 302(f), as amended Pub.L. 103-65, § 1, repealed section effective Oct. 1, 1998. Prior to amendment by Pub.L. 103-65, repeal of section was to have taken effect on Oct. 1, 1993.

Effective Dates

2001 Acts. Amendment by Pub.L. 107-8, extending to June 1, 2001, the date of repeal of this chapter, to take effect July 1, 2000, see section 2 of Pub.L. 107-8, set out as a note under section 1201 of this title.

1999 Acts. Section 2 of Pub.L. 106-70 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on October 1, 1999."

Section 2 of Pub.L. 106-5 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on April 1, 1999."

1998 Acts. Section 149 of Pub.L. 105-277, as amended Pub.L. 106-5, § 1, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031, provided that:

"(a) Chapter 12 of title 11 of the United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on September 30, 1999, is hereby reenacted for the period beginning on October 1, 1999, and ending on July 1, 2000.

"(b) All cases commenced or pending under chapter 12 of title 11, United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as reenacted under subsection (a) [of this note], and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after July 1, 2000. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after July 1, 2000.

"(c) [Repealed. Pub.L. 106-5, § 1(3), March 30, 1999, 113 Stat. 9.]"

1993 Acts. Amendment by Pub.L. 103-65, extending to Oct. 1, 1998 the date of repeal of this chapter, to take effect Aug. 6, 1993.

1986 Acts. Section repealed effective Oct. 1, 1998, see section 302(f) of Pub.L. 99-554, as amended, set out in a note under section 581 of Title 28. However, for extension of provisions, see section 149 of Pub.L. 105-277.

Section effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy §§ 428, 429.
West's Key No. Digests, Bankruptcy ☞3683.1.

§ 1225. Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;

(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B)(i) the plan provides that the holder of such claim retain the lien securing such claim; and

(ii) the value, as of the effective date of the plan, of property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim; or

(C) the debtor surrenders the property securing such claim to such holder; and

(6) the debtor will be able to make all payments under the plan and to comply with the plan.

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

(2) For purposes of this subsection, “disposable income” means income which is received by the debtor and which is not reasonably necessary to be expended—

(A) for the maintenance or support of the debtor or a dependent of the debtor; or

(B) for the payment of expenditures necessary for the continuation, preservation, and operation of the debtor’s business.

(c) After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the trustee.

Added and amended Pub.L. 99-554, Title II, § 255, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3110, 3124; Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311; Pub.L. 105-277, Div. C, Title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub.L. 106-5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10.

Repeal of Chapter; Extension of Provisions

Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1, 1998, this chapter is repealed, but that all cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, shall be conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed. For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10, provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Historical and Revision Notes

Amendments

2001 Amendments. Pub.L. 107-8, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2); Pub.L. 106-70, § 1, to extend effective date of repeal of this section to June 1, 2001, and so required no change in text.

1999 Amendments. Pub.L. 106-70, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2), to extend effective date of repeal of this section to July 1, 2000, and so required no change in text.

Pub.L. 106-5, § 1(1), (2), amended Pub.L. 105-277, Div. C, Title I, § 149, to extend effective date of repeal of this section to Oct. 1, 1999, and so required no change in text.

1998 Amendments. Pub.L. 105-277, § 149(a), temporarily reenacted this section, which had been repealed effective Oct. 1, 1998 by Pub.L. 99-554, § 302(f).

1993 Amendments. Pub.L. 103-65, § 1, amended Pub.L. 99-554, § 302(f), to extend effective date of repeal of this section to Oct. 1, 1998, and so required no change in text.

1986 Amendments. Pub.L. 99-554, § 302(f), as amended Pub.L. 103-65, § 1, repealed section effective Oct. 1, 1998. Prior to amendment by Pub.L. 103-65, repeal of section was to have taken effect on Oct. 1, 1993.

Effective Dates

2001 Acts. Amendment by Pub.L. 107-8, extending to June 1, 2001, the date of repeal of this chapter, to take effect July 1, 2000, see section 2 of Pub.L. 107-8, set out as a note under section 1201 of this title.

1999 Acts. Section 2 of Pub.L. 106-70 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on October 1, 1999."

Section 2 of Pub.L. 106-5 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on April 1, 1999."

1998 Acts. Section 149 of Pub.L. 105-277, as amended Pub.L. 106-5, § 1, Mar. 30, 1999,

113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031, provided that:

"(a) Chapter 12 of title 11 of the United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on September 30, 1999, is hereby reenacted for the period beginning on October 1, 1999, and ending on July 1, 2000.

"(b) All cases commenced or pending under chapter 12 of title 11, United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as reenacted under subsection (a) [of this note], and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after July 1, 2000. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after July 1, 2000.

"(c) [Repealed. Pub.L. 106-5, § 1(3), March 30, 1999, 113 Stat. 9.]"

1993 Acts. Amendment by Pub.L. 103-65, extending to Oct. 1, 1998 the date of repeal of this chapter, to take effect Aug. 6, 1993.

1986 Acts. Section repealed effective Oct. 1, 1998, see section 302(f) of Pub.L. 99-554, as amended, set out in a note under section 581 of Title 28. However, for extension of provisions, see section 149 of Pub.L. 105-277.

Section effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy §§ 428, 429.

West's Key No. Digests, Bankruptcy ⇨3683.1.

§ 1226. Payments

(a) Payments and funds received by the trustee shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan. If a plan is not confirmed, the trustee shall return any such payments to the debtor, after deducting—

(1) any unpaid claim allowed under section 503(b) of this title; and

(2) if a standing trustee is serving in the case, the percentage fee fixed for such standing trustee.

(b) Before or at the time of each payment to creditors under the plan, there shall be paid—

(1) any unpaid claim of the kind specified in section 507(a)(1) of this title; and

(2) if a standing trustee appointed under section 1202(c) of this title is serving in the case, the percentage fee fixed for such standing trustee under section 1202(d) of this title.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.

Added and amended Pub.L. 99-554, Title II, § 255, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3111, 3124; Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311; Pub.L. 103-394, Title V, § 501(d)(36), Oct. 22, 1994, 108 Stat. 4147; Pub.L. 105-277, Div. C, Title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub.L. 106-5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10.

Repeal of Chapter; Extension of Provisions

Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1, 1998, this chapter is repealed, but that all cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, shall be conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed. For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10, provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Historical and Revision Notes

References in Text. Section 1202(c) and (d) of this title, referred to in subsec. (b)(2), were repealed by section 227 of Pub.L. 99-554, and provisions relating to appointment of and fixing percentage fees for standing trustees are contained in section 586(b) and (e) of Title 28,

Judiciary and Judicial Procedure, as amended by section 113(b) and (c) of Pub.L. 99-554.

Amendments

2001 Amendments. Pub.L. 107-8, § 1, amended Pub.L. 105-277, Div. C, Title I,

§ 149, as previously amended by Pub.L. 106-5, § 1(1), (2); Pub.L. 106-70, § 1, to extend effective date of repeal of this section to June 1, 2001, and so required no change in text.

1999 Amendments. Pub.L. 106-70, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2), to extend effective date of repeal of this section to July 1, 2000, and so required no change in text.

Pub.L. 106-5, § 1(1), (2), amended Pub.L. 105-277, Div. C, Title I, § 149, to extend effective date of repeal of this section to Oct. 1, 1999, and so required no change in text.

1998 Amendments. Pub.L. 105-277, § 149(a), temporarily reenacted this section, which had been repealed effective Oct. 1, 1998 by Pub.L. 99-554, § 302(f).

1994 Amendments. Subsec. (b)(2). Pub.L. 103-394, § 501(d)(36), substituted "1202(c)" for "1202(d)" and "1202(d)" for "1202(e)".

1993 Amendments. Pub.L. 103-65, § 1, amended Pub.L. 99-554, § 302(f), to extend effective date of repeal of this section to Oct. 1, 1998.

1986 Amendments. Pub.L. 99-554, § 302(f), as amended Pub.L. 103-65, § 1, repealed section effective Oct. 1, 1998. Prior to amendment by Pub.L. 103-65, repeal of section was to have taken effect on Oct. 1, 1993.

Effective Dates

2001 Acts. Amendment by Pub.L. 107-8, extending to June 1, 2001, the date of repeal of this chapter, to take effect July 1, 2000. see section 2 of Pub.L. 107-8, set out as a note under section 1201 of this title.

1999 Acts. Amendment by Pub.L. 106-70, extending to July 1, 2000, the date of repeal of this chapter, to take effect Oct. 1, 1999, see section 2 of Pub.L. 106-70.

Amendment by Pub.L. 106-5, extending to Oct. 1, 1999 the date of repeal of this chapter, to take effect Apr. 1, 1999, see section 2 of Pub.L. 106-5.

Library References:

C.J.S. Bankruptcy §§ 426, 429.

West's Key No. Digests, Bankruptcy Ⓒ3685.

1998 Acts. Section reenacted, eff. Oct. 1, 1998, for the period beginning on Oct. 1, 1998, and ending on Apr. 1, 1999, but all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, to be conducted and determined under such chapter as if such chapter were continued in effect after Apr. 1, 1999, and the substantive rights of parties in connection with such cases, matters, and proceedings to continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after Apr. 1, 1999, see section 149 of Pub.L. 105-277.

1994 Acts. Amendment by Pub.L. 103-394 effective on Oct. 22, 1994, and not to apply with respect to cases commenced under Title 11 of the United States Code before Oct. 22, 1994, see section 702 of Pub.L. 103-394.

1993 Acts. Amendment by Pub.L. 103-65, extending to Oct. 1, 1998 the date of repeal of this chapter, to take effect Aug. 6, 1993, see section 3 of Pub.L. 103-65.

1986 Acts. Section repealed effective Oct. 1, 1998, see section 302(f) of Pub.L. 99-554, as amended, set out in a note under section 581 of Title 28. However, for extension of provisions, see section 149 of Pub.L. 105-277.

Section effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Separability of Provisions. If any provision of or amendment made by Pub.L. 103-394 or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remaining provisions of and amendments made by Pub.L. 103-394 and the application of such provisions and amendments to any person or circumstance shall not be affected thereby, see section 701 of Pub.L. 103-394.

§ 1227. Effect of confirmation

(a) Except as provided in section 1228(a) of this title, the provisions of a confirmed plan bind the debtor, each creditor, each equity security holder, and

each general partner in the debtor, whether or not the claim of such creditor, such equity security holder, or such general partner in the debtor is provided for by the plan, and whether or not such creditor, such equity security holder, or such general partner in the debtor has objected to, has accepted, or has rejected the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as provided in section 1228(a) of this title and except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

Added and amended Pub.L. 99-554, Title II, § 255, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3112, 3124; Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311; Pub.L. 105-277, Div. C, Title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub.L. 106-5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10.

Repeal of Chapter; Extension of Provisions

Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1, 1998, this chapter is repealed, but that all cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, shall be conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed. For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10, provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Historical and Revision Notes

Amendments

2001 Amendments. Pub.L. 107-8, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2); Pub.L. 106-70, § 1, to extend effective

date of repeal of this section to June 1, 2001, and so required no change in text.

1999 Amendments. Pub.L. 106-70, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5,

§ 1(1), (2), to extend effective date of repeal of this section to July 1, 2000, and so required no change in text.

Pub.L. 106-5, § 1(1), (2), amended Pub.L. 105-277, Div. C, Title I, § 149, to extend effective date of repeal of this section to Oct. 1, 1999, and so required no change in text.

1998 Amendments. Pub.L. 105-277, § 149(a), temporarily reenacted this section, which had been repealed effective Oct. 1, 1998 by Pub.L. 99-554, § 302(f).

1993 Amendments. Pub.L. 103-65, § 1, amended Pub.L. 99-554, § 302(f), to extend effective date of repeal of this section to Oct. 1, 1998, and so required no change in text.

1986 Amendments. Pub.L. 99-554, § 302(f), as amended Pub.L. 103-65, § 1, repealed section effective Oct. 1, 1998. Prior to amendment by Pub.L. 103-65, repeal of section was to have taken effect on Oct. 1, 1993.

Effective Dates

2001 Acts. Amendment by Pub.L. 107-8, extending to June 1, 2001, the date of repeal of this chapter, to take effect July 1, 2000, see section 2 of Pub.L. 107-8, set out as a note under section 1201 of this title.

1999 Acts. Section 2 of Pub.L. 106-70 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on October 1, 1999."

Section 2 of Pub.L. 106-5 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on April 1, 1999."

Library References:

C.J.S. Bankruptcy §§ 428, 429.
West's Key No. Digests, Bankruptcy ☞3683.1.

1998 Acts. Section 149 of Pub.L. 105-277, as amended Pub.L. 106-5, § 1, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031, provided that:

"(a) Chapter 12 of title 11 of the United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on September 30, 1999, is hereby reenacted for the period beginning on October 1, 1999, and ending on July 1, 2000.

"(b) All cases commenced or pending under chapter 12 of title 11, United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as reenacted under subsection (a) [of this note], and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after July 1, 2000. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after July 1, 2000.

"(c) [Repealed. Pub.L. 106-5, § 1(3), March 30, 1999, 113 Stat. 9.]"

1993 Acts. Amendment by Pub.L. 103-65, extending to Oct. 1, 1998 the date of repeal of this chapter, to take effect Aug. 6, 1993.

1986 Acts. Section repealed effective Oct. 1, 1998, see section 302(f) of Pub.L. 99-554, as amended, set out in a note under section 581 of Title 28. However, for extension of provisions, see section 149 of Pub.L. 105-277.

Section effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

§ 1228. Discharge

(a) As soon as practicable after completion by the debtor of all payments under the plan, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(10) of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or 1222(b)(10) of this title; or

(2) of the kind specified in section 523(a) of this title.

(b) At any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1229 of this title is not practicable.

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or 1222(b)(10) of this title; or

(2) of a kind specified in section 523(a) of this title.

(d) On request of a party in interest before one year after a discharge under this section is granted, and after notice and a hearing, the court may revoke such discharge only if—

(1) such discharge was obtained by the debtor through fraud; and

(2) the requesting party did not know of such fraud until after such discharge was granted.

(e) After the debtor is granted a discharge, the court shall terminate the services of any trustee serving in the case.

Added and amended Pub.L. 99-554, Title II, § 255, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3112, 3124; Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311; Pub.L. 105-277, Div. C, Title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub.L. 106-5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 106-518, Title II, § 208, Nov. 13, 2000, 114 Stat. 2415; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10.

Repeal of Chapter; Extension of Provisions

Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1, 1998, this chapter is repealed, but that all cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, shall be conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed. For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10,

provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Historical and Revision Notes

Amendments

2001 Amendments. Pub.L. 107-8, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2); Pub.L. 106-70, § 1, to extend effective date of repeal of this section to June 1, 2001, and so required no change in text.

1999 Amendments. Pub.L. 106-70, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2), to extend effective date of repeal of this section to July 1, 2000, and so required no change in text.

Pub.L. 106-5, § 1(1), (2), amended Pub.L. 105-277, Div. C, Title I, § 149, to extend effective date of repeal of this section to Oct. 1, 1999, and so required no change in text.

1998 Amendments. Pub.L. 105-277, § 149(a), temporarily reenacted this section, which had been repealed effective Oct. 1, 1998 by Pub.L. 99-554, § 302(f).

1993 Amendments. Pub.L. 103-65, § 1, amended Pub.L. 99-554, § 302(f), to extend effective date of repeal of this section to Oct. 1, 1998, and so required no change in text.

1986 Amendments. Pub.L. 99-554, § 302(f), as amended Pub.L. 103-65, § 1, repealed section effective Oct. 1, 1998. Prior to amendment by Pub.L. 103-65, repeal of section was to have taken effect on Oct. 1, 1993.

Effective Dates

2001 Acts. Amendment by Pub.L. 107-8, extending to June 1, 2001, the date of repeal of this chapter, to take effect July 1, 2000, see section 2 of Pub.L. 107-8, set out as a note under section 1201 of this title.

1999 Acts. Section 2 of Pub.L. 106-70 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set

out as a note under this section] shall take effect on October 1, 1999."

Section 2 of Pub.L. 106-5 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on April 1, 1999."

1998 Acts. Section 149 of Pub.L. 105-277, as amended Pub.L. 106-5, § 1, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031, provided that:

"(a) Chapter 12 of title 11 of the United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on September 30, 1999, is hereby reenacted for the period beginning on October 1, 1999, and ending on July 1, 2000.

"(b) All cases commenced or pending under chapter 12 of title 11, United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as reenacted under subsection (a) [of this note], and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after July 1, 2000. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after July 1, 2000.

"(c) [Repealed. Pub.L. 106-5, § 1(3), March 30, 1999, 113 Stat. 9.]"

1993 Acts. Amendment by Pub.L. 103-65, extending to Oct. 1, 1998 the date of repeal of this chapter, to take effect Aug. 6, 1993.

1986 Acts. Section repealed effective Oct. 1, 1998, see section 302(f) of Pub.L. 99-554, as amended, set out in a note under section 581 of

Title 28. However, for extension of provisions, see section 149 of Pub.L. 105-277.

Section effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under

this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy § 432.

West's Key No. Digests, Bankruptcy ⇨3674.

§ 1229. Modification of plan after confirmation

(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, on request of the debtor, the trustee, or the holder of an allowed unsecured claim, to—

(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

(2) extend or reduce the time for such payments; or

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan.

(b)(1) Sections 1222(a), 1222(b), and 1223(c) of this title and the requirements of section 1225(a) of this title apply to any modification under subsection (a) of this section.

(2) The plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved.

(c) A plan modified under this section may not provide for payments over a period that expires after three years after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time.

Added and amended Pub.L. 99-554, Title II, § 255, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3113, 3124; Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311; Pub.L. 105-277, Div. C, Title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub.L. 106-5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10.

Repeal of Chapter; Extension of Provisions

Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1, 1998, this chapter is repealed, but that all cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, shall be conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed. For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2,

Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10, provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Historical and Revision Notes

Amendments

2001 Amendments. Pub.L. 107-8, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2); Pub.L. 106-70, § 1, to extend effective date of repeal of this section to June 1, 2001, and so required no change in text.

1999 Amendments. Pub.L. 106-70, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2), to extend effective date of repeal of this section to July 1, 2000, and so required no change in text.

Pub.L. 106-5, § 1(1), (2), amended Pub.L. 105-277, Div. C, Title I, § 149, to extend effective date of repeal of this section to Oct. 1, 1999, and so required no change in text.

1998 Amendments. Pub.L. 105-277, § 149(a), temporarily reenacted this section, which had been repealed effective Oct. 1, 1998 by Pub.L. 99-554, § 302(f).

1993 Amendments. Pub.L. 103-65, § 1, amended Pub.L. 99-554, § 302(f), to extend effective date of repeal of this section to Oct. 1, 1998, and so required no change in text.

1986 Amendments. Pub.L. 99-554, § 302(f), as amended Pub.L. 103-65, § 1, repealed section effective Oct. 1, 1998. Prior to amendment by Pub.L. 103-65, repeal of section was to have taken effect on Oct. 1, 1993.

Effective Dates

2001 Acts. Amendment by Pub.L. 107-8, extending to June 1, 2001, the date of repeal of this chapter, to take effect July 1, 2000, see section 2 of Pub.L. 107-8, set out as a note under section 1201 of this title.

1999 Acts. Section 2 of Pub.L. 106-70 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to

1231 of this title, and amending provisions set out as a note under this section] shall take effect on October 1, 1999."

Section 2 of Pub.L. 106-5 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on April 1, 1999."

1998 Acts. Section 149 of Pub.L. 105-277, as amended Pub.L. 106-5, § 1, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031, provided that:

"(a) Chapter 12 of title 11 of the United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on September 30, 1999, is hereby reenacted for the period beginning on October 1, 1999, and ending on July 1, 2000.

"(b) All cases commenced or pending under chapter 12 of title 11, United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as reenacted under subsection (a) [of this note], and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after July 1, 2000. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after July 1, 2000.

"(c) [Repealed. Pub.L. 106-5, § 1(3), March 30, 1999, 113 Stat. 9.]"

1993 Acts. Amendment by Pub.L. 103-65, extending to Oct. 1, 1998 the date of repeal of this chapter, to take effect Aug. 6, 1993.

1986 Acts. Section repealed effective Oct. 1, 1998, see section 302(f) of Pub.L. 99-554, as

amended, set out in a note under section 581 of Title 28. However, for extension of provisions, see section 149 of Pub.L. 105-277.

Section effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under

this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy §§ 430, 431.

West's Key No. Digests, Bankruptcy ☞3684.

§ 1230. Revocation of an order of confirmation

(a) On request of a party in interest at any time within 180 days after the date of the entry of an order of confirmation under section 1225 of this title, and after notice and a hearing, the court may revoke such order if such order was procured by fraud.

(b) If the court revokes an order of confirmation under subsection (a) of this section, the court shall dispose of the case under section 1207 of this title, unless, within the time fixed by the court, the debtor proposes and the court confirms a modification of the plan under section 1229 of this title.

Added and amended Pub.L. 99-554, Title II, § 255, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3113, 3124; Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311; Pub.L. 105-277, Div. C, Title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub.L. 106-5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10.

Repeal of Chapter; Extension of Provisions

*Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1, 1998, this chapter is repealed, but that all cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, shall be conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed. **For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.***

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10, provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Historical and Revision Notes

Amendments

2001 Amendments. Pub.L. 107-8, § 1, amended Pub.L. 105-277, Div. C, Title 1, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2); Pub.L. 106-70, § 1, to extend effective date of repeal of this section to June 1, 2001, and so required no change in text.

1999 Amendments. Pub.L. 106-70, § 1, amended Pub.L. 105-277, Div. C, Title 1, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2), to extend effective date of repeal of this section to July 1, 2000, and so required no change in text.

Pub.L. 106-5, § 1(1), (2), amended Pub.L. 105-277, Div. C, Title 1, § 149, to extend effective date of repeal of this section to Oct. 1, 1999, and so required no change in text.

1998 Amendments. Pub.L. 105-277, § 149(a), temporarily reenacted this section, which had been repealed effective Oct. 1, 1998 by Pub.L. 99-554, § 302(f).

1993 Amendments. Pub.L. 103-65, § 1, amended Pub.L. 99-554, § 302(f), to extend effective date of repeal of this section to Oct. 1, 1998, and so required no change in text.

1986 Amendments. Pub.L. 99-554, § 302(f), as amended Pub.L. 103-65, § 1, repealed section effective Oct. 1, 1998. Prior to amendment by Pub.L. 103-65, repeal of section was to have taken effect on Oct. 1, 1993.

Effective Dates

2001 Acts. Amendment by Pub.L. 107-8, extending to June 1, 2001, the date of repeal of this chapter, to take effect July 1, 2000, see section 2 of Pub.L. 107-8, set out as a note under section 1201 of this title.

1999 Acts. Section 2 of Pub.L. 106-70 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on October 1, 1999."

Library References:

C.J.S. Bankruptcy §§ 430, 431.
West's Key No. Digests, Bankruptcy Ⓒ3684.

Section 2 of Pub.L. 106-5 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on April 1, 1999."

1998 Acts. Section 149 of Pub.L. 105-277, as amended Pub.L. 106-5, § 1, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031, provided that:

"(a) Chapter 12 of title 11 of the United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on September 30, 1999, is hereby reenacted for the period beginning on October 1, 1999, and ending on July 1, 2000.

"(b) All cases commenced or pending under chapter 12 of title 11, United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as reenacted under subsection (a) [of this note], and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after July 1, 2000. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after July 1, 2000.

"(c) [Repealed. Pub.L. 106-5, § 1(3), March 30, 1999, 113 Stat. 9.]"

1993 Acts. Amendment by Pub.L. 103-65, extending to Oct. 1, 1998 the date of repeal of this chapter, to take effect Aug. 6, 1993.

1986 Acts. Section repealed effective Oct. 1, 1998, see section 302(f) of Pub.L. 99-554, as amended, set out in a note under section 581 of Title 28. However, for extension of provisions, see section 149 of Pub.L. 105-277.

Section effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

§ 1231. Special tax provisions

(a) For the purpose of any State or local law imposing a tax on or measured by income, the taxable period of a debtor that is an individual shall terminate on

the date of the order for relief under this chapter, unless the case was converted under section 706 of this title.

(b) The trustee shall make a State or local tax return of income for the estate of an individual debtor in a case under this chapter for each taxable period after the order for relief under this chapter during which the case is pending.

(c) The issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1225 of this title, may not be taxed under any law imposing a stamp tax or similar tax.

(d) The court may authorize the proponent of a plan to request a determination, limited to questions of law, by a State or local governmental unit charged with responsibility for collection or determination of a tax on or measured by income, of the tax effects, under section 346 of this title and under the law imposing such tax, of the plan. In the event of an actual controversy, the court may declare such effects after the earlier of—

(1) the date on which such governmental unit responds to the request under this subsection; or

(2) 270 days after such request.

Added and amended Pub.L. 99-554, Title II, § 255, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3113, 3124; Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311; Pub.L. 105-277, Div. C, Title I, § 149(a), Oct. 21, 1998, 112 Stat. 2681-610; Pub.L. 106-5, § 1(1), (2), Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, § 1, May 11, 2001, 115 Stat. 10.

Repeal of Chapter; Extension of Provisions

*Pub.L. 99-554, Title III, § 302(f), Oct. 27, 1986, 100 Stat. 3124, as amended Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that, effective Oct. 1, 1998, this chapter is repealed, but that all cases commenced or pending under this chapter, and all matters and proceedings in or relating to such cases, shall be conducted and determined under this chapter as if such chapter had not been repealed, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed. **For extension of provisions until June 1, 2001, see italicized note set out immediately following this note.***

Pub.L. 105-277, Div. C, Title I, § 149, Oct. 21, 1998, 112 Stat. 2681-610, as amended Pub.L. 106-5, §§ 1, 2, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, §§ 1, 2, Oct. 9, 1999, 113 Stat. 1031; Pub.L. 107-8, §§ 1, 2, May 11, 2001, 115 Stat. 10, provided that, to take effect on July 1, 2000, chapter 12 of Title 11 [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on June 30, 2000, is reenacted for the period beginning on July 1, 2000, and ending on June 1, 2001, but that all cases commenced or pending under this chapter 12, as reenacted under section 149(a) of Pub.L. 105-277, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after June 1, 2001, and that the substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after June 1, 2001.

Historical and Revision Notes

Amendments

2001 Amendments. Pub.L. 107-8, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2); Pub.L. 106-70, § 1, to extend effective date of repeal of this section to June 1, 2001, and so required no change in text.

1999 Amendments. Pub.L. 106-70, § 1, amended Pub.L. 105-277, Div. C, Title I, § 149, as previously amended by Pub.L. 106-5, § 1(1), (2), to extend effective date of repeal of this section to July 1, 2000, and so required no change in text.

Pub.L. 106-5, § 1(1), (2), amended Pub.L. 105-277, Div. C, Title I, § 149, to extend effective date of repeal of this section to Oct. 1, 1999, and so required no change in text.

1998 Amendments. Pub.L. 105-277, § 149(a), temporarily reenacted this section, which had been repealed effective Oct. 1, 1998 by Pub.L. 99-554, § 302(f).

1993 Amendments. Pub.L. 103-65, § 1, amended Pub.L. 99-554, § 302(f), to extend effective date of repeal of this section to Oct. 1, 1998, and so required no change in text.

1986 Amendments. Pub.L. 99-554, § 302(f), as amended Pub.L. 103-65, § 1, repealed section effective Oct. 1, 1998. Prior to amendment by Pub.L. 103-65, repeal of section was to have taken effect on Oct. 1, 1993.

Effective Dates

2001 Acts. Amendment by Pub.L. 107-8, extending to June 1, 2001, the date of repeal of this chapter, to take effect July 1, 2000, see section 2 of Pub.L. 107-8, set out as a note under section 1201 of this title.

1999 Acts. Section 2 of Pub.L. 106-70 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on October 1, 1999."

Section 2 of Pub.L. 106-5 provided that: "The amendments made by section 1 [amending sections 1201 to 1208 and 1221 to 1231 of this title, and amending provisions set out as a note under this section] shall take effect on April 1, 1999."

1998 Acts. Section 149 of Pub.L. 105-277, as amended Pub.L. 106-5, § 1, Mar. 30, 1999, 113 Stat. 9; Pub.L. 106-70, § 1, Oct. 9, 1999, 113 Stat. 1031, provided that:

"(a) Chapter 12 of title 11 of the United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as in effect on September 30, 1999, is hereby reenacted for the period beginning on October 1, 1999, and ending on July 1, 2000.

"(b) All cases commenced or pending under chapter 12 of title 11, United States Code [this chapter; 11 U.S.C.A. § 1201 et seq.], as reenacted under subsection (a) [of this note], and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter were continued in effect after July 1, 2000. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the law applicable to such cases, matters, and proceedings as if such chapter were continued in effect after July 1, 2000.

"(c) [Repealed. Pub.L. 106-5, § 1(3), March 30, 1999, 113 Stat. 9.]"

1993 Acts. Amendment by Pub.L. 103-65, extending to Oct. 1, 1998 the date of repeal of this chapter, to take effect Aug. 6, 1993.

1986 Acts. Section repealed effective Oct. 1, 1998, see section 302(f) of Pub.L. 99-554, as amended, set out in a note under section 581 of Title 28. However, for extension of provisions, see section 149 of Pub.L. 105-277.

Section effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Taxation §§ 1079 et seq., 1094, 1100, 1102.

West's Key No. Digests, Taxation Ⓒ105½, 982, 1021.1, 1079.1.

CHAPTER 13—ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

Sec.

- 1301. Stay of action against codebtor.
- 1302. Trustee.
- 1303. Rights and powers of debtor.
- 1304. Debtor engaged in business.
- 1305. Filing and allowance of postpetition claims.
- 1306. Property of the estate.
- 1307. Conversion or dismissal.

SUBCHAPTER II—THE PLAN

- 1321. Filing of plan.
- 1322. Contents of plan.
- 1323. Modification of plan before confirmation.
- 1324. Confirmation hearing.
- 1325. Confirmation of plan.
- 1326. Payments.
- 1327. Effect of confirmation.
- 1328. Discharge.
- 1329. Modification of plan after confirmation.
- 1330. Revocation of an order of confirmation.

Cross References

Chapter applicable only in cases under this chapter, see section 103.

Chapters 1, 3 and 5 of this title applicable in cases under this chapter, see section 103.

Claims arising from rejection of executory contracts or unexpired leases by plans under this chapter, see section 502.

Conversion from

Chapter 7, see section 706.

Chapter 11, see section 1112.

Duration of automatic stay, see section 362.

Eligibility to serve as trustee, see section 321.

Executory contracts and unexpired leases, see section 365.

Individual with regular income defined, see section 101.

Individuals who may be debtors under this chapter, see section 109.

Limitation on compensation of trustee, see section 326.

Recommendation by trustee of conversion from chapter 11 to this chapter, see section 1106.

Return of excessive attorney compensation if transferred property was to be paid by debtor under plan under this chapter, see section 329.

Special tax provisions, see section 346.

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

§ 1301. Stay of action against codebtor

(a) Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless—

(1) such individual became liable on or secured such debt in the ordinary course of such individual's business; or

(2) the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title.

(b) A creditor may present a negotiable instrument, and may give notice of dishonor of such an instrument.

(c) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that—

(1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;

(2) the plan filed by the debtor proposes not to pay such claim; or

(3) such creditor's interest would be irreparably harmed by continuation of such stay.

(d) Twenty days after the filing of a request under subsection (c)(2) of this section for relief from the stay provided by subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the debtor or any individual that is liable on such debt with the debtor files and serves upon such party in interest a written objection to the taking of the proposed action.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2645; Pub.L. 98-353, Title III, §§ 313, 524, July 10, 1984, 98 Stat. 355, 388.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) automatically stays the holder of a claim based on a consumer debt of the chapter 13 debtor from acting or proceeding in any way, except as authorized pursuant to subsections (b) and (c), against an individual or the property of an individual liable with the chapter 13 debtor, unless such codebtor became liable in the ordinary course of his business, or unless the case is closed, dismissed, or converted to another chapter.

Under the terms of the agreement with the codebtor who is not in bankruptcy, the creditor

has a right to collect all payments to the extent they are not made by the debtor at the time they are due. To the extent to which a chapter 13 plan does not propose to pay a creditor his claims, the creditor may obtain relief from the court from the automatic stay and collect such claims from the codebtor. Conversely, a codebtor obtains the benefit of any payments made to the creditor under the plan. If a debtor defaults on scheduled payments under the plan, then the codebtor would be liable for the remaining deficiency; otherwise, payments not made under the plan may never be made

by the codebtor. The obligation of the codebtor to make the creditor whole at the time payments are due remains.

The automatic stay under this section pertains only to the collection of a consumer debt, defined by section 101(7) of this title to mean a debt incurred by an individual primarily for a personal, family, or household purpose. Therefore, not all debts owed by a chapter 13 debtor will be subject to the stay of the codebtor, particularly those business debts incurred by an individual with regular income, as defined by section 101(24) of this title, engaged in business, that is permitted by virtue of section 109(b) and section 1304 to obtain chapter 13 relief.

Subsection (b) excepts the giving of notice of dishonor of a negotiable instrument from the reach of the codebtor stay.

Under subsection (c), if the codebtor has property out of which the creditor's claim can be satisfied, the court can grant relief from the stay absent the transfer of a security interest in that property by the codebtor to the creditor. Correspondingly, if there is reasonable cause to believe that property is about to be disposed of by the codebtor which could be used to satisfy his obligation to the creditor, the court should lift the stay to allow the creditor to perfect his rights against such property. Likewise, if property is subject to rapid depreciation or decrease in value the stay should be lifted to allow the creditor to protect his rights to reach such property. Otherwise, the creditor's interest would be irreparably harmed by such stay. Property which could be used to satisfy the claim could be disposed of or encumbered and placed beyond the reach of the creditor. The creditor should be allowed to protect his rights to reach property which could satisfy his claim and prevent its erosion in value, disposal, or encumbrance.

Notes of Committee on the Judiciary, House Report No. 95-595. This section is new. It is designed to protect a debtor operating under a chapter 13 individual repayment plan case by insulating him from indirect pressures from his creditors exerted through friends or relatives that may have cosigned an obligation of the debtor. The protection is limited, however, to ensure that the creditor involved does not lose the benefit of the bargain he made for a cosigner. He is entitled to full compensation, including any interest, fees, and costs provided for by the agreement under which the debtor obtained his loan. The creditor is simply required to share with other

creditors to the extent that the debtor will repay him under the chapter 13 plan. The creditor is delayed, but his substantive rights are not affected.

Subsection (a) is the operative subsection. It stays action by a creditor after an order for relief under chapter 13. The creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that has secured the debt, unless the individual became liable or secured the debt in the ordinary course of his business, or the case is closed, dismissed, or converted to chapter 7 or 11.

Subsection (b) permits the creditor, notwithstanding the stay, to present a negotiable instrument and to give notice of dishonor of the instrument, in order to preserve his substantive rights against the codebtor as required by applicable nonbankruptcy law.

Subsection (c) requires the court to grant relief from the stay in certain circumstances. The court must grant relief to the extent that the debtor does not propose to pay, under the plan, the amount owed to the creditor. The court must also grant relief to the extent that the debtor was really the codebtor in the transaction, that is, to the extent that the nondebtor party actually received the consideration for the claim held by the creditor. Finally, the court must grant relief to the extent that the creditor's interest would be irreparably harmed by the stay, for example, where the codebtor filed bankruptcy himself, or threatened to leave the locale, or lost his job.

Legislative Statements. Section 1301 of the House amendment is identical with the provision contained in section 1301 of the House bill and adopted by the Senate amendment. Section 1301(c)(1) indicates that a basis for lifting the stay is that the debtor did not receive consideration for the claim by the creditor, or in other words, the debtor is really the "codebtor." As with other sections in title 11, the standard of receiving consideration is a general rule, but where two co-debtors have agreed to share liabilities in a different manner than profits it is the individual who does not ultimately bear the liability that is protected by the stay under section 1301.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III,

July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Automatic stay, see section 362.

Automatic stay of enforcement of claims against debtor in chapter 9 cases, see section 922.

Claims of codebtors, see section 509.

Effect of conversion, see section 348.

Effect of section 362 of this title in stockbroker liquidation cases, see section 742.

Extension of time generally, see section 108.

Library References:

C.J.S. Bankruptcy § 68.

West's Key No. Digests, Bankruptcy ⇨2396.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1302. Trustee

(a) If the United States trustee appoints an individual under section 586(b) of title 28 to serve as standing trustee in cases under this chapter and if such individual qualifies under section 322 of this title, then such individual shall serve as trustee in the case. Otherwise, the United States trustee shall appoint one disinterested person to serve as trustee in the case or the United States trustee may serve as a trustee in the case.

(b) The trustee shall—

(1) perform the duties specified in sections 704(2), 704(3), 704(4), 704(5), 704(6), 704(7), and 704(9) of this title;

(2) appear and be heard at any hearing that concerns—

(A) the value of property subject to a lien;

(B) confirmation of a plan; or

(C) modification of the plan after confirmation;

(3) dispose of, under regulations issued by the Director of the Administrative Office of the United States Courts, moneys received or to be received in a case under chapter XIII of the Bankruptcy Act;

(4) advise, other than on legal matters, and assist the debtor in performance under the plan; and

(5) ensure that the debtor commences making timely payments under section 1326 of this title.

(c) If the debtor is engaged in business, then in addition to the duties specified in subsection (b) of this section, the trustee shall perform the duties specified in sections 1106(a)(3) and 1106(a)(4) of this title.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2645; Pub.L. 98-353, Title III, §§ 314, 525, July 10, 1984, 98 Stat. 356, 388; Pub.L. 99-554, Title II, §§ 228, 283(w), Oct. 27, 1986, 100 Stat. 3103, 3118; Pub.L. 103-394, Title V, § 501(d)(37), October 22, 1994, 108 Stat. 4147.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. The principal administrator in a chapter 13 case is the chapter 13 trustee. Experience under chapter XIII of the Bankruptcy Act [former section 1001 et seq. of this title] has shown that the more efficient and effective wage earner programs have been conducted by standing chapter XIII trustees who exercise a broad range of responsibilities in both the design and the effectuation of debtor plans.

Subsection (a) provides administrative flexibility by permitting the bankruptcy judge to appoint an individual from the panel of trustees established pursuant to 28 U.S.C. § 604(f) and qualified under section 322 of title 11, either to serve as a standing trustee in all chapter 13 cases filed in the district or a portion thereof, or to serve in a single case.

Subsection (b)(1) makes it clear that the chapter 13 trustee is no mere disbursing agent of the monies paid to him by the debtor under the plan [section 1322 (a)(1)], by imposing upon him certain relevant duties of a liquidation trustee prescribed by section 704 of this title.

Subsection (b)(2) requires the chapter 13 trustee to appear before and be heard by the bankruptcy court whenever the value of property secured by a lien or the confirmation or modification of a plan after confirmation as provided by sections 1323-1325 is considered by the court.

Subsection (b)(3) requires the chapter 13 trustee to advise and counsel the debtor while under chapter 13, except on matters more appropriately left to the attorney for the debtor. The chapter 13 trustee must also assist the debtor in performance under the plan by attempting to tailor the requirements of the plan to the changing needs and circumstances of the debtor during the extension period.

Subsection (c) imposes on the trustee in a chapter 13 case filed by a debtor engaged in business the investigative and reporting duties normally required of a chapter 11 debtor or trustee as prescribed by section 1106(a)(3) and (4).

Legislative Statements. Section 1302 of the House amendment adopts a provision contained in the Senate amendment instead of the position taken in the House bill. Sections 1302(d) and (e) are modeled on the standing trustee system contained in the House bill with

the court assuming supervisory functions in districts not under the pilot program.

Codification. Section 525(b)(1) of Pub.L. 98-353 purported to amend subsec. (e) in paragraph (4), by striking out “fix” and inserting in lieu thereof “set for such individual”. The amendment was not capable of execution in that no par. (4) has been enacted in subsec. (e). The amendment was executed to par. (1) as the probable intent of Congress.

Section 283(w) of Pub.L. 99-554 amended subsec. (e)(1) of this section by substituting “set for such individual” for “fix”, and section 228(2) of Pub.L. 99-554 struck out such subsection (e).

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

1986 Amendment. Subsec. (a). Pub.L. 99-554, § 228(1), substituted “If the United States trustee appoints” for “If the court has appointed”, “section 586(b) of title 28” for “subsection (d) of this section”, and “the United States trustee shall appoint one disinterested person to serve as trustee in the case or the United States trustee may serve as a trustee in the case” for “the court shall appoint a person to serve as trustee in the case”.

Subsecs. (d) and (e). Pub.L. 99-554, § 228(2), struck out subsecs. (d) and (e) which read as follows:

“(d) If the number of cases under this chapter commenced in a particular judicial district so warrant, the court may appoint one or more individuals to serve as standing trustee for such district in cases under this chapter.

“(e)(1) A court that has appointed an individual under subsection (d) of this section to serve as standing trustee in cases under this chapter shall set for such individual—

“(A) a maximum annual compensation, not to exceed the lowest annual rate of basic pay in effect for grade GS-16 of the General Schedule prescribed under section 5332 of title 5; and

“(B) a percentage fee, not to exceed ten percent, based on such maximum annual

compensation and the actual, necessary expenses incurred by such individual as standing trustee.

“(2) Such individual shall collect such percentage fee from all payments under plans in the cases under this chapter for which such individual serves as standing trustee. Such individual shall pay annually to the Treasury—

“(A) any amount by which the actual compensation received by such individual exceeds five percent of all such payments made under plans in cases under this chapter for which such individual serves as standing trustee; and

“(B) any amount by which the percentage fee fixed under paragraph (1)(B) of this subsection for all such cases exceeds—

“(i) such individual’s actual compensation for such cases, as adjusted under subparagraph (A) of this paragraph; plus

“(ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases.”.

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; References in Title 11 Section 326(b) to Title 11 Chapter 13 and Section 1302(a) and (d); Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 228, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney

General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 228, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 228, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 228, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district,

whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments.

See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions.

For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Appointment of trustee in

Chapter 11 cases, see section 1104.

Railroad reorganization cases, see section 1163.

Compensation of officers, see section 330.

Election of trustee, see section 702.

Eligibility to serve as trustee, see section 321.

Limitation on compensation of trustee, see section 326.

Qualification of trustee, see section 322.

Removal of trustee, see section 324.

Role and capacity of trustee, see section 323.

Time of bringing action, see section 546.

Time of payment of percentage fee fixed for standing trustee, see section 1326.

Library References:

C.J.S. Bankruptcy § 435 et seq.

West's Key No. Digests, Bankruptcy ⇨3703.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1303. Rights and powers of debtor

Subject to any limitations on a trustee under this chapter, the debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections 363(b), 363(d), 363(e), 363(f), and 363(l), of this title.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2646.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. A chapter 13 debtor is vested with the identical rights and powers, and is subject to the same limitations in regard to their exercise, as those given a liquidation trustee by virtue of section 363(b), (d), (e), (f), and (h) of title 11, relating to the sale, use or lease of property.

Legislative Statements. Section 1303 of the House amendment specifies rights and powers that the debtor has exclusive of the trustees. The section does not imply that the debtor does not also possess other powers concurrently with the trustee. For example, although section 1323 is not specified in section 1303, certainly it is intended that the debtor has the power to sue and be sued.

Cross References

Rights, powers and duties of debtor in possession in chapter 11 cases, see section 1107.

Library References:

C.J.S. Bankruptcy § 435.

West's Key No. Digests, Bankruptcy ☞3703.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1304. Debtor engaged in business

(a) A debtor that is self-employed and incurs trade credit in the production of income from such employment is engaged in business.

(b) Unless the court orders otherwise, a debtor engaged in business may operate the business of the debtor and, subject to any limitations on a trustee under sections 363(c) and 364 of this title and to such limitations or conditions as the court prescribes, shall have, exclusive of the trustee, the rights and powers of the trustee under such sections.

(c) A debtor engaged in business shall perform the duties of the trustee specified in section 704(8) of this title.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2646; Pub.L. 98-353, Title III, §§ 311(b)(2), 526, July 10, 1984, 98 Stat. 355, 389.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Increased access to the simpler, speedier, and less expensive debtor relief provisions of chapter 13 is accomplished by permitting debtors engaged in business to proceed under chapter 13, provided their income is sufficiently stable and regular to permit compliance with a chapter 13 plan [section 101(24)] and that the debtor (or the debtor and spouse) do not owe liquidated, noncontingent unsecured debts of \$50,000, or liquidated, noncontingent secured debts of \$200,000 (§ 109(d)).

Section 1304(a) states that a self-employed individual who incurs trade credit in the production of income is a debtor engaged in business.

Subsection (b) empowers a chapter 13 debtor engaged in business to operate his business, subject to the rights, powers and limitations that pertain to a trustee under section 363(c) and 364 of title 11, and subject to such further

limitations and conditions as the court may prescribe.

Subsection (c) requires a chapter 13 debtor engaged in business to file with the court certain financial statements relating to the operation of the business.

Legislative Statements. Section 1304(b) of the House amendment adopts the approach taken in the comparable section of the Senate amendment as preferable to the position taken in the House bill.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Authorization of trustee to operate business in
Chapter 7 cases, see section 721.
Chapter 11 cases, see section 1108.

Obtaining credit, see section 364.

Rights, powers and duties of debtor in possession in chapter 11 cases, see section 1107.

Use, sale or lease of property, see section 363.

Library References:

C.J.S. Bankruptcy § 435.

West's Key No. Digests, Bankruptcy Ⓒ3703.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1305. Filing and allowance of postpetition claims

(a) A proof of claim may be filed by any entity that holds a claim against the debtor—

(1) for taxes that become payable to a governmental unit while the case is pending; or

(2) that is a consumer debt, that arises after the date of the order for relief under this chapter, and that is for property or services necessary for the debtor's performance under the plan.

(b) Except as provided in subsection (c) of this section, a claim filed under subsection (a) of this section shall be allowed or disallowed under section 502 of this title, but shall be determined as of the date such claim arises, and shall be allowed under section 502(a), 502(b), or 502(c) of this title, or disallowed under section 502(d) or 502(e) of this title, the same as if such claim had arisen before the date of the filing of the petition.

(c) A claim filed under subsection (a)(2) of this section shall be disallowed if the holder of such claim knew or should have known that prior approval by the trustee of the debtor's incurring the obligation was practicable and was not obtained.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2647.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 1305, exclusively applicable in chapter 13 cases, supplements the provisions of sections 501-511 of title 11, dealing with the filing and allowance of claims. Sections 501-511 apply in chapter 13 cases by virtue of section 103(a) of this title. Section 1305(a) provides for the filing of a proof of claim for taxes and other obligations incurred after the filing of the chapter 13 case. Subsection (b) prescribes that section 502 of title 11 governs the allowance of section 1305(a) claims, except that its standards shall

be applied as of the date of allowance of the claim, rather than the date of filing of the petition. Subsection (c) requires the disallowance of a postpetition claim for property or services necessary for the debtor's performance under the plan, if the holder of the claim knew or should have known that prior approval by the trustee of the debtor's incurring of the obligation was practicable and was not obtained.

Subsection (d) is the successor to section 656(b) of the Bankruptcy Act [former section 1056(b) of this title]. Section 1305(d) recog-

nizes the inequity to chapter 13 debtors and their creditors alike of permitting a usurious or other invalid claim to share in distributions under the chapter 13 plan. It is envisioned that appropriate rules will be adopted mandating procedures for assuring the provision of proof by a chapter 13 creditor that the claim is free from any charge forbidden by applicable law, including usury.

Legislative Statements. Section 1305(a)(2) of the House amendment modifies similar provisions contained in the House and Senate bills by restricting application of the paragraph to a consumer debt. Debts of the debtor that are not consumer debts should not be subjected to section 1305(c) or section 1328(d) of the House amendment.

Section 1305(b) of the House amendment represents a technical modification of similar provisions contained in the House bill and Senate amendment.

The House amendment deletes section 1305(d) of the Senate amendment as unnecessary. Section 502(b)(1) is sufficient to disallow any claim to the extent the claim represents the usurious interest or any other charge forbidden by applicable law. It is anticipated that the Rules of Bankruptcy Procedure may require a creditor filing a proof of claim in a case under chapter 13 to include an affirmative statement as contemplated by section 1305(d) of the Senate amendment.

Cross References

Allowance and filing of claims and interests in chapter 11 cases, see section 1111.
 Discharge of certain consumer debts, see section 1328.
 Effect of conversion, see section 348.
 Filing of proofs of claims or interests, see section 501.
 Provisions in plans for payment of claims, see section 1322.

Library References:

C.J.S. Bankruptcy §§ 240, 242.
 West's Key No. Digests, Bankruptcy ⇨2830, 2832.1.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1306. Property of the estate

(a) Property of the estate includes, in addition to the property specified in section 541 of this title—

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.

(b) Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2647; Pub.L. 99-554, Title II, § 257(u), Oct. 27, 1986, 100 Stat. 3116.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 541 is expressly made applicable to chapter 13 cases

by section 103(a). Section 1306 broadens the definition of property of the estate for chapter 13 purposes to include all property acquired

and all earnings from services performed by the debtor after the commencement of the case.

Subsection (b) nullifies the effect of section 521(3), otherwise applicable, by providing that a chapter 13 debtor need not surrender possession of property of the estate, unless required by the plan or order of confirmation.

Legislative Statements. Section 1306(a)(2) adopts a provision contained in the Senate amendment in preference to a similar provision contained in the House bill.

Effective Date of 1986 Amendments; Savings Provisions. References in Title

Library References:

C.J.S. Bankruptcy §§ 120, 122.

West's Key No. Digests, Bankruptcy ⇨2558.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1307. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable.

(b) On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

(c) Except as provided in subsection (e) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28;
- (3) failure to file a plan timely under section 1321 of this title;
- (4) failure to commence making timely payments under section 1326 of this title;
- (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
- (6) material default by the debtor with respect to a term of a confirmed plan;
- (7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;

11 Section 326(b) to Title 11 Chapter 13 and Section 1302(a) and (d); Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(u), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

(8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;

(9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521; or

(10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521.

(d) Except as provided in subsection (e) of this section, at any time before the confirmation of a plan under section 1325 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 11 or 12 of this title.

(e) The court may not convert a case under this chapter to a case under chapter 7, 11, or 12 of this title if the debtor is a farmer, unless the debtor requests such conversion.

(f) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2647; Pub.L. 98-353, Title III, §§ 315, 527, July 10, 1984, 98 Stat. 356, 389; Pub.L. 99-554, Title II, §§ 229, 257(v), Oct. 27, 1986, 100 Stat. 3103, 3116.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsections (a) and (b) confirm, without qualification, the rights of a chapter 13 debtor to convert the case to a liquidating bankruptcy case under chapter 7 of title 11, at any time, or to have the chapter 13 case dismissed. Waiver of any such right is unenforceable. Subsection (c) specifies various conditions for the exercise of the power of the court to convert a chapter 13 case to one under chapter 7 or to dismiss the case. Subsection (d) deals with the conversion of a chapter 13 case to one under chapter 11. Subsection (e) prohibits conversion of the chapter 13 case filed by a farmer to chapter 7 or 11 except at the request of the debtor. No case is to be converted from chapter 13 to any other chapter, unless the debtor is an eligible debtor under the new chapter.

Notes of Committee on the Judiciary, House Report No. 95-595. Subsection (f) reinforces section 109 by prohibiting conversion to a chapter under which the debtor is not eligible to proceed.

Legislative Statements. Section 1307(a) is derived from the Senate amendment in pref-

erence to a comparable provision contained in the House bill.

References in Text. Chapter 123 of title 28, referred to in subsec. (c)(2) of this title, is classified to section 1911 et seq. of Title 28, Judiciary and Judicial Procedure.

1986 Amendment. Subsec. (c). Pub.L. 99-554, § 229(1)(A), added “or the United States trustee” following “party in interest”.

Subsec. (c)(9), (10). Pub.L. 99-554, § 229(1)(B)-(D), added pars. (9) and (10).

Subsec. (d). Pub.L. 99-554, § 229(2), added “or the United States trustee” following “party in interest”.

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; Savings Provisions; References in Title 11 Section 326(b) to Title 11 Chapter 13 and Section 1302(a) and (d); Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Ala-

bama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendments by Pub.L. 99-554, § 257(v), not to apply with respect to cases commenced under Title 11, Bankruptcy, before 30 days after Oct. 27, 1986, see section 302(c)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 229, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 229, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 229, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and,

except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply, until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 229 except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Conversion from chapter 7, see section 706.

Conversion or dismissal upon revocation of order of confirmation, see section 1330.

Dismissal of

Chapter 7 cases, see section 707.

Chapter 9 cases, see section 927.

Distribution of property of estate converted to chapter 7, see section 726.

Effect of

Conversion, see section 348.

Dismissal, see section 349.

Executory contracts and unexpired leases, see section 365.

Liquidation of estate in railroad reorganization cases, see section 1174.

Library References:

C.J.S. Bankruptcy §§ 436, 437.

West's Key No. Digests, Bankruptcy Ⓒ3716.10-3717.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

SUBCHAPTER II—THE PLAN**§ 1321. Filing of plan**

The debtor shall file a plan.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2648.

Historical and Revision Notes

Notes of Committee on the Judiciary, templates the filing of a plan only by the
Senate Report No. 95-989. Chapter 13 con- debtor.

Cross References

Conversion or dismissal for failure to timely file plan, see section 1307.

Filing of plan in chapter 9 cases, see section 941.

Who may file plan in chapter 11 cases, see section 1121.

Library References:

C.J.S. Bankruptcy § 438.

West's Key No. Digests, Bankruptcy Ⓒ3704.1.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1322. Contents of plan

(a) The plan shall—

(1) provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; and

(3) if the plan classifies claims, provide the same treatment for each claim within a particular class.

(b) Subject to subsections (a) and (c) of this section, the plan may—

(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

(3) provide for the curing or waiving of any default;

(4) provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claim;

(5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

(6) provide for the payment of all or any part of any claim allowed under section 1305 of this title;

(7) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

(8) provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor;

(9) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity; and

(10) include any other appropriate provision not inconsistent with this title.

(c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—

(1) a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law; and

(2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

(d) The plan may not provide for payments over a period that is longer than three years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than five years.

(e) Notwithstanding subsection (b)(2) of this section and sections 506(b) and 1325(a)(5) of this title, if it is proposed in a plan to cure a default, the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2648; Pub.L. 98-355, Title III, §§ 316, 528, July 10, 1984, 98 Stat. 356, 389; Pub.L. 103-394, Title III, §§ 301, 305(c), October 22, 1994, 108 Stat. 4131, 4134.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Chapter 13 is designed to serve as a flexible vehicle for the repayment of part or all of the allowed claims of the debtor. Section 1322 emphasizes that purpose by fixing a minimum of mandatory plan provisions.

Subsection (a) requires that the plan submit whatever portion of the future income of the debtor is necessary to implement the plan to the control of the trustee, mandates payment in full of all section 507 priority claims, and requires identical treatment for all claims of a particular class.

Subsection (b) permits a chapter 13 plan to (1) divide unsecured claims not entitled to priority under section 507 into classes in the manner authorized for chapter 11 claims; (2) modify the rights of holders of secured and unsecured claims, except claims wholly secured by real estate mortgages; (3) cure or waive any default; (4) propose payments on unsecured claims concurrently with payments on any secured claim or any other class of unsecured claims; (5) provide for curing any default on any secured or unsecured claim on which the final payment is due after the proposed final payment under the plan; (6) provide for payment of any allowed postpetition claim; (7) assume or reject any previously unrejected executory contract or unexpired lease of the debtor; (8) propose the payment of all or any part of any claim from property of the estate or of the debtor; (9) provide for the vesting of property of the estate; and (10) include any other provision not inconsistent with other provisions of title 11.

Subsection (c) limits the payment period under the plan to 3 years, except that a 4-year payment period may be permitted by the court.

Legislative Statements. Section 1322(b)(2) of the House amendment represents a compromise agreement between similar provisions in the House bill and Senate amendment. Under the House amendment, the plan

may modify the rights of holders of secured claims other than a claim secured by a security interest in real property that is the debtor's principal residence. It is intended that a claim secured by the debtor's principal residence may be treated with under section 1322(b)(5) of the House amendment.

Section 1322(c) adopts a 5-year period derived from the House bill in preference to a 4-year period contained in the Senate amendment. A conforming change is made in section 1329(c) adopting the provision in the House bill in preference to a comparable provision in the Senate amendment.

Tax payments in wage earner plans.

The House bill provided that a wage earner plan had to provide that all priority claims would be paid in full. The Senate amendment contained a special rule in section 1325(c) requiring that Federal tax claims must be paid in cash, but that such tax claims can be paid in deferred cash installments under the general rules applicable to the payment of debts in a wage earner plan, unless the Internal Revenue Service negotiates with the debtor for some different medium or time for payment of the tax liability.

The House bill adopts the substance of the Senate amendment rule under section 1322(a)(2) of the House amendment. A wage earner plan must provide for full payment in deferred cash payments, of all priority claims, unless the holder of a particular claim agrees with a different treatment of such claim.

1994 Act. Subsection (c), added by the amendment, safeguards a debtor's rights in a chapter 13 case by allowing the debtor to cure home mortgage defaults at least through completion of a foreclosure sale under applicable nonbankruptcy law. However, if the State provides the debtor more extensive "cure" rights (through, for example, some later redemption period), the debtor will continue to enjoy such rights in bankruptcy. This amend-

ment overrules the result in *First National Fidelity Corp. v. Perry*, 945 F.2d 61 (3d Cir. 1991).

The amendment also adds subsection (e), which effectively overrules the decision of the Supreme Court in *Rake v. Wade*, 113 S.Ct. 2187 (1993). In that case, the Court held that the Bankruptcy Code required that interest be paid on mortgage arrearages paid by debtors curing defaults on their mortgages. This had the effect of giving secured creditors interest on interest payments, and interest on the late charges and other fees, even where applicable state law prohibited such interest and even when it was something that was not contemplated by either party in the original transaction.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective

Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Section 702(b)(2)(D) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(D) The amendments made by section 305 shall apply only to agreements entered into after the date of enactment of this Act [October 22, 1994]."

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Contents of plan filed in
Chapter 11 cases, see section 1123.
Railroad reorganization cases, see section 1172.

Library References:

C.J.S. Bankruptcy §§ 438 et seq.
West's Key No. Digests, Bankruptcy Ⓒ3704.1-3714.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1323. Modification of plan before confirmation

(a) The debtor may modify the plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of section 1322 of this title.

(b) After the debtor files a modification under this section, the plan as modified becomes the plan.

(c) Any holder of a secured claim that has accepted or rejected the plan is deemed to have accepted or rejected, as the case may be, the plan as modified, unless the modification provides for a change in the rights of such holder from what such rights were under the plan before modification, and such holder changes such holder's previous acceptance or rejection.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2649.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. The debtor is permitted to modify the plan before confirmation without court approval so long as the modified plan, which becomes the plan on fil-

ing, complies with the requirements of section 1322.

The original acceptance or rejection of a plan by the holder of a secured claim remains bind-

ing unless the modified plan changes the rights of the holder and the holder withdraws or alters its earlier acceptance or rejection.

Cross References

Modification of plan filed in
Chapter 9 cases, see section 942.
Chapter 11 cases, see section 1127.

Library References:

C.J.S. Bankruptcy §§ 448, 451.
West's Key No. Digests, Bankruptcy Ⓒ3713.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1324. Confirmation hearing

After notice, the court shall hold a hearing on confirmation of the plan. A party in interest may object to confirmation of the plan.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2649; Pub.L. 98-353, Title III, § 529, July 10, 1984, 98 Stat. 389; Pub.L. 99-554, Title II, § 283(x), Oct. 27, 1986, 100 Stat. 3118.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Any party in interest may object to the confirmation of a plan, as distinguished from merely rejecting a plan. An objection to confirmation is predicated on failure of the plan or the procedures employed prior to confirmation to conform with the requirements of chapter 13. The bankruptcy judge is required to provide notice and an opportunity for hearing any such objection to confirmation.

Effective Date of 1986 Amendments; Savings Provisions. References in Title 11 Section 326(b) to Title 11 Chapter 13 and Section 1302(a) and (d); Quarterly Fees. Amendment by Pub.L. 99-554 effective

30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Confirmation hearing in chapter 11 cases, see section 1128.

Library References:

C.J.S. Bankruptcy § 449.
West's Key No. Digests, Bankruptcy Ⓒ3715(1-8).

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1325. Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;

(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B)(i) the plan provides that the holder of such claim retain the lien securing such claim; and

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; or

(C) the debtor surrenders the property securing such claim to such holder; and

(6) the debtor will be able to make all payments under the plan and to comply with the plan.

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

(2) For purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended—

(A) for the maintenance or support of the debtor or a dependent of the debtor, including charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to a qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)) in an amount not to exceed 15 percent of the gross income of the debtor for the year in which the contributions are made; and

(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

(c) After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the trustee.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2649; Pub.L. 98-353, Title III, §§ 317, 530, July 10, 1984, 98 Stat. 356, 389; Pub.L. 99-554, Title II, § 283(y), Oct. 27, 1986, 100 Stat. 3118; Pub.L. 105-183, § 4, June 19, 1998, 112 Stat. 517.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. The bankruptcy court must confirm a plan if (1) the plan satisfies the provisions of chapter 13 and other applicable provisions of title 11; (2) it is proposed in good faith; (3) it is in the best interests of creditors, and defined by subsection (a)(4) of Section 1325; (4) it has been accepted by the holder of each allowed secured claim provided for the plan or where the holder of any such secured claim is to receive value under the plan not less than the amount of the allowed secured claim, or where the debtor surrenders to the holder the collateral securing any such allowed secured claim; (5) the plan is feasible; and (6) the requisite fees and charges have been paid.

Subsection (b) authorizes the court to order an entity, as defined by Section 101(15), to pay any income of the debtor to the trustee. Any governmental unit is an entity subject to such an order.

Legislative Statements. Section 1325(a)(5)(B) of the House amendment modifies the House bill and Senate amendment to significantly protect secured creditors in chapter 13. Unless the secured creditor accepts the plan, the plan must provide that the secured creditor retain the lien securing the creditor's allowed secured claim in addition to receiving value, as of the effective date of the plan of property to be distributed under the plan on account of the claim not less than the allowed amount of the claim. To this extent, a secured creditor in a case under chapter 13 is treated identically with a recourse creditor under section 1111(b)(1) of the House amendment except that the secured creditor in a case under chapter 13 may receive any property of a value as of the effective date of the plan equal to the allowed amount of the creditor's secured claim rather than being restricted to receiving deferred cash payments. Of course, the secured creditors' lien only secures the value of the collateral and to the extent property is distrib-

uted of a present value equal to the allowed amount of the creditor's secured claim the creditor's lien will have been satisfied in full. Thus the lien created under section 1325(a)(5)(B)(i) is effective only to secure deferred payments to the extent of the amount of the allowed secured claim. To the extent the deferred payments exceed the value of the allowed amount of the secured claim and the debtor subsequently defaults, the lien will not secure unaccrued interest represented in such deferred payments.

References in Text. Chapter 123 of title 28, referred to in subsec. (a)(2), is classified to section 1911 et seq. of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1998 Amendments. Pub.L. 105-183, § 5, 112 Stat. 518-19, provides, "This Act and the amendments made by this Act shall apply to any case brought under an applicable provision of title 11, United States Code, that is pending or commenced on or after the date of enactment of this Act [June 19, 1998]."

Effective Date of 1986 Amendments; References in Title 11 Section 326(b) to Title 11 Chapter 13 and Section 1302(a) and (d); Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

- Confirmation of plan in
 - Chapter 9 cases, see section 943.
 - Chapter 11 cases, see section 1129.
 - Railroad reorganization cases, see section 1173.
- Conversion or dismissal, see section 1307.

Library References:

- C.J.S. Bankruptcy § 438 et seq.
- West's Key No. Digests, Bankruptcy Ⓒ3704.1-3715(13).

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1326. Payments

(a)(1) Unless the court orders otherwise, the debtor shall commence making the payments proposed by a plan within 30 days after the plan is filed.

(2) A payment made under this subsection shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as practicable. If a plan is not confirmed, the trustee shall return any such payment to the debtor, after deducting any unpaid claim allowed under section 503(b) of this title.

(b) Before or at the time of each payment to creditors under the plan, there shall be paid—

(1) any unpaid claim of the kind specified in section 507(a)(1) of this title; and

(2) if a standing trustee appointed under section 586(b) of title 28 is serving in the case, the percentage fee fixed for such standing trustee under section 586(e)(1)(B) of title 28.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2650; Pub.L. 98-353, Title III, §§ 318(a), 531, July 10, 1984, 98 Stat. 357, 389; Pub.L. 99-554, Title II, §§ 230, 283(z), Oct. 27, 1986, 100 Stat. 3103, 3118; Pub.L. 103-394, Title III, § 307, October 22, 1994, 108 Stat. 4135.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Section 1326 supplements the priorities provisions of section 507. Subsection (a) requires accrued costs of administration and filing fees, as well as fees due the chapter 13 trustee, to be disbursed before payments to creditors under the plan. Subsection (b) makes it clear that the chapter 13 trustee is normally to make distribution to creditors of the payments made under the plan by the debtor.

Notes of Committee on the Judiciary, House Report No. 95-595. Subsection (a) requires that before or at the time of each payment any outstanding administrative expenses [and] any percentage fee due for a private standing chapter 13 trustee be paid in full.

Legislative Statements. Section 1326(a)(2) of the House amendment adopts a comparable provision contained in the House bill providing for standing trustees.

1994 Act. The amendment to subsection (a)(1) clarifies Congressional intent that the trustee should commence making the payments “as soon as practicable” after the confirmation of the chapter 13 plan. Such payments should be made even prior to the bar date for filing claims, but only if the trustee can provide adequate protection against any prejudice to later filing claimants caused by distributions prior to the bar date.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

1986 Amendment. Subsec. (b)(2). Pub.L. 99-554, § 230, substituted “586(b) of title 28” for “1302(d) of this title” and “586(e)(1)(B) of title 28” for “1302(e) of this title”.

See Effective Date of 1986 Amendment, etc., notes set out below.

Effective Date of 1986 Amendments; References in Title 11 Section 326(b) to Title 11 Chapter 13 and Section 1302(a) and (d); Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed: Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub.L. 99-554, § 230, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 230, not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 230, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy

region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Amendment by Pub.L. 99-554, § 230 except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

See 1986 Amendment notes set out above.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Pro-

visions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Payment stopped on checks remaining unpaid 90 days after final distribution, see section 347.

Library References:

C.J.S. Bankruptcy § 447.

West's Key No. Digests, Bankruptcy Ⓒ3712, 3714.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1327. Effect of confirmation

(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2650.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. Subsection (a) binds the debtor and each creditor to the provisions of a confirmed plan, whether or not the claim of the creditor is provided for by the plan and whether or not the creditor has accepted,

rejected, or objected to the plan. Unless the plan itself or the order confirming the plan otherwise provides, confirmation is deemed to vest all property of the estate in the debtor, free and clear of any claim or interest of any creditor provided for by the plan.

Cross References

Effect of confirmation in

Chapter 9 cases, see section 944.

Chapter 11 cases, see section 1141.

Library References:

C.J.S. Bankruptcy §§ 449, 450.

West's Key No. Digests, Bankruptcy Ⓒ3715(9.1-13).

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1328. Discharge

(a) As soon as practicable after completion by the debtor of all payments under the plan, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant

the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1322(b)(5) of this title;

(2) of the kind specified in paragraph (5), (8), or (9) of section 523(a) of this title; or

(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime.

(b) At any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1329 of this title is not practicable.

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1322(b)(5) of this title; or

(2) of a kind specified in section 523(a) of this title.

(d) Notwithstanding any other provision of this section, a discharge granted under this section does not discharge the debtor from any debt based on an allowed claim filed under section 1305(a)(2) of this title if prior approval by the trustee of the debtor's incurring such debt was practicable and was not obtained.

(e) On request of a party in interest before one year after a discharge under this section is granted, and after notice and a hearing, the court may revoke such discharge only if—

(1) such discharge was obtained by the debtor through fraud; and

(2) the requesting party did not know of such fraud until after such discharge was granted.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2650; Pub.L. 98-353, Title III, § 532, July 10, 1984, 98 Stat. 389; Pub.L. 101-508, § 3007(b), Nov. 5, 1990, 104 Stat. 1388-28; Pub.L. 101-581, §§ 2(b), 3, Nov. 15, 1990, 104 Stat. 2865; Pub.L. 101-647, Title XXXI, §§ 3102(b), 3103, Nov. 29, 1990, 104 Stat. 4916; Pub.L. 103-394, Title III, § 302, Title V, § 501(d), October 22, 1994, 108 Stat. 4132, 4147.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. The court is to enter a discharge, unless waived, as soon as practicable after completion of payments under the plan. The debtor is to be discharged of all

debts provided for by the plan or disallowed under section 502, except a debt provided for under the plan the last payment on which was not due until after the completion of the plan,

or a debt incurred for willful and malicious conversion of or injury to the property or person of another.

Subsection (b) is the successor to Bankruptcy Act Section 661 [former section 1061 of this title]. This subsection permits the bankruptcy judge to grant the debtor a discharge at any time after confirmation of a plan, if the court determines, after notice and hearing, that the failure to complete payments under the plan is due to circumstances for which the debtor should not justly be held accountable, the distributions made to each creditor under the plan equal in value the amount that would have been paid to the creditor had the estate been liquidated under chapter 7 of title 11 at the date of the hearing under this subsection, and that modification of the plan is impracticable. The discharge granted under subsection (b) relieves the debtor from all unsecured debts provided for by the plan or disallowed under section 502, except nondischargeable debts described in section 523(a) of title 11 or debts of the type covered by section 1322(b)(5).

Subsection (d) excepts from any chapter 13 discharge a debt based on an allowed section 1305(a)(2) postpetition claim, if prior trustee approval of the incurring of the debt was practicable but was not obtained.

A chapter 13 discharge obtained through fraud and before the moving party gained knowledge of the fraud may be revoked by the court under subsection (e), after notice and hearing, at the request of any party in interest made within 1 year after the discharge was granted.

Legislative Statements. Section 1328(a) adopts a provision contained in the Senate amendment permitting the court to approve a waiver of discharge by the debtor. It is anticipated that such a waiver must be in writing executed after the order for relief in a case under chapter 13.

Codification. Pub.L. 101-581 and Pub.L. 101-647, Title XXXI, §§ 3102(b) and 3103, made identical amendments to subsec. (a) of this section. See, also note below.

Cross References

Discharge in Chapter 7 cases, see section 727.

Effect of

Conversion, see section 348.

Discharge, see section 524.

Exceptions to discharge, see section 523.

Amendments by Pub.L. 101-581 and Pub.L. 101-647 which both inserted "or 523(a)(9)" following "523(a)(5)" were incapable of literal execution in view of prior amendment by Pub.L. 101-508 which substituted "paragraph (5) or (8) of section 523(a)" for "section 523(a)(5)", thereby deleting language subsequently amended. The amendments have been editorially executed according to the probable intent of Congress.

1994 Amendments. Section 302 of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, amended 1328(a)(3) by adding the phrase ", or criminal fine," after "restitution."

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective and Termination Dates of 1990 Amendments. Amendment by Pub.L. 101-581, §§ 2(b) and 3 effective Nov. 15, 1990, see section 4 of Pub.L. 101-581, set out as a note under section 523 of this title. [For effective date of identical amendments by Pub.L. 101-647, see, also, section 3104 of Pub.L. 101-647, set out as a note under section 523 of this title.]

Section 3007(b)(2) of Pub.L. 101-508 provided that: "The amendment made by paragraph (1) [amending subsec. (a)(2) of this section] shall not apply to any case under the provisions of title 11, United States Code [this title], commenced before the date of the enactment of this Act [Nov. 5, 1990]."

Amendment by Pub.L. 101-508, § 3007(a)(2), see section 3008, set out as a note under section 362 of this title.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions, see the Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Library References:

C.J.S. Bankruptcy § 453.

West's Key No. Digests, Bankruptcy Ⓒ3718(1-10).

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1329. Modification of plan after confirmation

(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to—

(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

(2) extend or reduce the time for such payments; or

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan.

(b)(1) Sections 1322(a), 1322(b), and 1323(c) of this title and the requirements of section 1325(a) of this title apply to any modification under subsection (a) of this section.

(2) The plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved.

(c) A plan modified under this section may not provide for payments over a period that expires after three years after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2651; Pub.L. 98-353, Title III, §§ 319, 533, July 10, 1984, 98 Stat. 357, 389.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. At any time prior to the completion of payments under a confirmed plan, the plan may be modified, after notice and hearing, to change the amount of payments to creditors or a particular class of creditors and to extend or reduce the payment period. A modified plan may not contain any provision which could not be included in an original plan as prescribed by section 1322. A modified plan may not call for payments to be made beyond four years as measured from the

date of the commencement of payments under the original plan.

Effective Date of 1984 Amendments. See section 553 of Pub.L. 98-353, Title III, July 10, 1984, 98 Stat. 392, set out as an Effective Date of 1984 Amendment note preceding chapter 1 of Title 11, Bankruptcy.

Separability of Provisions. For separability of provisions of Title III of Pub.L. 98-353, see section 551 of Pub.L. 98-353 set out as a Separability of Provisions note preceding chapter 1 of Title 11, Bankruptcy.

Cross References

Conversion or dismissal upon denial of confirmation of modified plan, see section 1307.

Modification of plan in

Chapter 9 cases, see section 942.

Chapter 11 cases, see section 1127.

Library References:

C.J.S. Bankruptcy §§ 448, 451.

West's Key No. Digests, Bankruptcy Ⓒ3713.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

§ 1330. Revocation of an order of confirmation

(a) On request of a party in interest at any time within 180 days after the date of the entry of an order of confirmation under section 1325 of this title, and after notice and a hearing, the court may revoke such order if such order was procured by fraud.

(b) If the court revokes an order of confirmation under subsection (a) of this section, the court shall dispose of the case under section 1307 of this title, unless, within the time fixed by the court, the debtor proposes and the court confirms a modification of the plan under section 1329 of this title.

Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2651.

Historical and Revision Notes

Notes of Committee on the Judiciary, Senate Report No. 95-989. The court may revoke an order of confirmation procured by fraud, after notice and hearing, on application of a party in interest filed within 180 days after the entry of the order. Thereafter, unless a modified plan is confirmed, the court is to convert or dismiss the chapter 13 case as provided in section 1307.

Legislative Statements. Section 1331 of the House bill and Senate amendment is deleted in the House amendment.

Section 1331 of title 11 of the House bill and the comparable provisions in sections 1322 and 1327(d) of the Senate amendment, pertaining to assessment and collection of taxes in wage

earner plans, are deleted, and the governing rule is placed in section 505(c) of the House amendment. The provisions of both bills allowing assessment and collection of taxes after confirmation of the wage-earner plan are modified to allow assessment and collection after the court fixes the fact and amount of a tax liability, including administrative period taxes, regardless of whether this occurs before or after confirmation of the plan. The provision of the House bill limiting the collection of taxes to those assessed before one year after the filing of the petition is eliminated, thereby leaving the period of limitations on assessment of these nondischargeable tax liabilities the usual period provided by the Internal Revenue Code [Title 26].

Cross References

Conversion or dismissal upon revocation of order of confirmation, see section 1307.

Revocation of order of confirmation in chapter 11 cases, see section 1144.

Library References:

C.J.S. Bankruptcy §§ 451, 452.

West's Key No. Digests, Bankruptcy Ⓒ3715(14).

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the *Bankruptcy Highlights*.

CHAPTER 15—UNITED STATES TRUSTEES

§§ 1501 to 151326. Repealed. Pub.L. 99-554, Title II, § 231, Oct. 27, 1986, 100 Stat. 3103. See 28 U.S.C.A. § 581 et seq. (*infra*).

Historical and Revision Notes

Section 1501, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2652, set forth applicability of chapter.

Section 15101, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2652, defined terms “entity” and “governmental unit”.

Section 15102, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2652, set forth rule of construction.

Section 15103, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2652; Pub.L. 98-353, Title III, §§ 311(b)(3), 318(b), July 10, 1984, 98 Stat. 355, 357, set forth applicability of subchapters and sections.

Section 15303, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2653, set forth provisions relating to involuntary cases.

Section 15321, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2653, related to eligibility to serve as trustee.

Section 15322, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2653, related to qualifications of trustees.

Section 15324, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2653, related to removal of trustee or examiner.

Section 15326, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2653, related to limitation on compensation of trustees.

Section 15330, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2653, set forth compensation of officers.

Section 15343, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2653, related to examination of the debtor.

Section 15345, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2654; Pub.L. 97-258, § 3(c), Sept. 13, 1982, 96 Stat. 1064, related to money of estates.

Section 15701, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2654, related to appointment, etc., of interim trustee.

Section 15703, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2654, related to successor trustee.

Section 15704, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2655, related to duties of trustees.

Section 15727, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2655, set forth provisions relating to discharge under section 727(a) of this title.

Section 151102, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2655, set forth provisions relating to creditors' and equity security holders' committees.

Section 151104, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2655, related to appointment of trustee or examiner in reorganization matters.

Section 151105, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2656, related to termination of trustee's appointment.

Section 151163, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2656, related to appointment of trustee.

Section 151302, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2656; Pub.L. 98-353, Title III, §§ 311(b)(4), 534, July 10, 1984, 98 Stat. 355, 390, related to functions of trustee with respect to adjustment of debts of an individual with regular income.

Section 151326, Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2657, set forth provisions relating to payments.

Effective Date of Repeal. Repeal by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302 of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Repeal not applicable in or with respect to Northern District of Alabama until March 1, 1987, or the effective date of any election made under section 302(d)(3)(A) of Pub.L. 99-554, see section 302(d)(3)(H) of Pub.L. 99-554, set out as a note under section 581 of Title 28.

Repeal of Chapter by Pub.L. 95-598, § 408(c). Pub.L. 95-598, Title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, as amended Pub.L. 98-166, Title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub.L. 98-353, Title III, § 323, July 10,

1984, 98 Stat. 358; Pub.L. 99-429, Sept. 30, 1986, 100 Stat. 985, provided that, effective Nov. 10, 1986, this chapter is repealed.

Pub.L. 99-500, Title I, § 101(b) [Title II, § 200], Oct. 18, 1986, 100 Stat. 1783-45, and Pub.L. 99-591, Title I, § 101(b) [Title II, § 200], Oct. 30, 1986, 100 Stat. 3341-45 provided that, effective immediately before November 10, 1986, section 408(c) of the Act of

November 6, 1978 (Public Law 95-598; 92 Stat. 2687), is amended by striking out "November 10, 1986" and inserting in lieu thereof "September 30, 1987". Such amendment was incapable of execution in view of the prior amendment of such section 408(c) by section 307(a) of Pub.L. 99-554, effective Oct. 27, 1986, pursuant to section 302(b) of Pub.L. 99-554, and in view of the repeal of section 408(c) by section 307(b) of Pub.L. 99-554.

Cross References

See 28 U.S.C.A. § 581 et seq., *infra*.



RELATED PROVISIONS OF U.S. CODE TITLES 18 AND 28

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TITLE 18

CRIMES AND CRIMINAL PROCEDURE

CHAPTER 9—BANKRUPTCY

Sec.

- 151. Definition.
 - 152. Concealment of assets; false oaths and claims; bribery.
 - 153. Embezzlement against estate.
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 - 155. Fee agreements in cases under Title 11 and receiverships.
 - 156. Knowing disregard of bankruptcy law or rule.
 - 157. Bankruptcy fraud.
-

§ 151. Definition

As used in this chapter, the term “debtor” means a debtor concerning whom a petition has been filed under title 11.

June 25, 1948, c. 645, 62 Stat. 689; Nov. 6, 1978, Pub.L. 95-598, Title III, § 314(b)(1), 92 Stat. 2676; Sept. 13, 1994, Pub.L. 103-322, Title XXXIII, § 330008(5), 108 Stat. 2143.

§ 152. Concealment of assets; false oaths and claims; bribery

A person who—

(1) knowingly and fraudulently conceals from a custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or, in connection with a case under title 11, from creditors or the United States Trustee, any property belonging to the estate of a debtor;

(2) knowingly and fraudulently makes a false oath or account in or in relation to any case under title 11;

(3) knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, in or in relation to any case under title 11;

(4) knowingly and fraudulently presents any false claim for proof against the estate of a debtor, or uses any such claim in any case under title 11, in a personal capacity or as or through an agent, proxy, or attorney;

(5) knowingly and fraudulently receives any material amount of property from a debtor after the filing of a case under title 11, with intent to defeat the provisions of title 11;

(6) knowingly and fraudulently gives, offers, receives, or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof for acting or forbearing to act in any case under title 11;

(7) in a personal capacity or as an agent or officer of any person or corporation, in contemplation of a case under title 11 by or against the person or any other person or corporation, or with intent to defeat the provisions of title 11, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation;

(8) after the filing of a case under title 11 or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor; or

(9) after the filing of a case under title 11, knowingly and fraudulently withholds from a custodian, trustee, marshal, or other officer of the court or a United States Trustee entitled to its possession, any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor,

shall be fined under this title, imprisoned not more than 5 years, or both.

June 25, 1948, c. 645, 62 Stat. 689; June 12, 1960, Pub.L. 86-519, § 2, 74 Stat. 217; Sept. 2, 1960, Pub.L. 86-701, 74 Stat. 753; Oct. 18, 1976, Pub.L. 94-550, § 4, 90 Stat. 2535; Nov. 6, 1978, Pub.L. 95-598, Title III, § 314(a), (c), 92 Stat. 2676, 2677; Nov. 18, 1988, Pub.L. 100-690, Title VII, § 7017, 102 Stat. 4395; Sept. 13, 1994, Pub.L. 103-322, Title XXXIII, § 330016(1)(K), 108 Stat. 2147; Pub.L. 103-394, Title III, § 312(a)(1)(A), October 22, 1994, 108 Stat. 4138; Oct. 11, 1996, Pub.L. 104-294, Title VI, § 601(a)(1), 110 Stat. 3498.

Library References:

C.J.S. Bankruptcy §§ 472, 473.

West's Key No. Digests, Bankruptcy ⇨3861-3863.

§ 153. Embezzlement against estate

(a) **Offense.**—A person described in subsection (b) who knowingly and fraudulently appropriates to the person's own use, embezzles, spends, or transfers any property or secretes or destroys any document belonging to the estate of a debtor shall be fined under this title, imprisoned not more than 5 years, or both.

(b) **Person to Whom Section Applies.**—A person described in this subsection is one who has access to property or documents belonging to an estate by virtue of the person's participation in the administration of the estate as a trustee, custodian, marshal, attorney, or other officer of the court or as an agent, employee, or other person engaged by such an officer to perform a service with respect to the estate.

June 25, 1948, c. 645, 62 Stat. 690; Nov. 6, 1978, Pub.L. 95-598, Title III, § 314(a)(1), (d)(1), (2), 92 Stat. 2676, 2677; Pub.L. 103-394, Title III, § 312(a), October 22, 1994, 108 Stat. 4139; Oct. 11, 1996, Pub.L. 104-294, Title VI, § 601(a)(1), 110 Stat. 3498.

Library References:

C.J.S. Bankruptcy §§ 472, 473.

West's Key No. Digests, Bankruptcy ⇨3861-3863.

§ 154. Adverse interest and conduct of officers

A person who, being a custodian, trustee, marshal, or other officer of the court—

(1) knowingly purchases, directly or indirectly, any property of the estate of which the person is such an officer in a case under title 11;

(2) knowingly refuses to permit a reasonable opportunity for the inspection by parties in interest of the documents and accounts relating to the affairs of estates in the person's charge by parties when directed by the court to do so; or

(3) knowingly refuses to permit a reasonable opportunity for the inspection by the United States Trustee of the documents and accounts relating to the affairs of an estate in the person's charge,

shall be fined under this title and shall forfeit the person's office, which shall thereupon become vacant.

June 25, 1948, c. 645, 62 Stat. 690; Nov. 6, 1978, Pub.L. 95-598, Title III, § 314(a)(2), (e)(1), (2), 92 Stat. 2676, 2677; Pub.L. 103-394, Title III, § 312(a)(1)(A), October 22, 1994, 108 Stat. 4139; Oct. 11, 1996, Pub.L. 104-294, Title VI, § 601(a)(1), 110 Stat. 3498.

Library References:

C.J.S. Bankruptcy §§ 197, 210-212, 472, 473.

West's Key No. Digests, Bankruptcy ☞3008.1, 3079, 3861-3863.

§ 155. Fee agreements in cases under Title 11 and receiverships

Whoever, being a party in interest, whether as a debtor, creditor, receiver, trustee or representative of any of them, or attorney for any such party in interest, in any receivership or case under title 11 in any United States court or under its supervision, knowingly and fraudulently enters into any agreement, express or implied, with another such party in interest or attorney for another such party in interest, for the purpose of fixing the fees or other compensation to be paid to any party in interest or to any attorney for any party in interest for services rendered in connection therewith, from the assets of the estate, shall be fined under this title or imprisoned not more than one year, or both.

June 25, 1948, c. 645, 62 Stat. 690; May 24, 1949, c. 139, § 4, 63 Stat. 90; Nov. 6, 1978, Pub.L. 95-598, Title III, § 314(f)(1), (2), 92 Stat. 2677; Sept. 13, 1994, Pub.L. 103-322, Title XXXIII, § 330016(1)(K), 108 Stat. 2147.

Library References:

C.J.S. Bankruptcy §§ 232 et seq., 472, 473.

West's Key No. Digests, Bankruptcy ☞3151-3205, 3861-3863.

§ 156. Knowing disregard of bankruptcy law or rule

(a) **Definitions.**—In this section—

“bankruptcy petition preparer” means a person, other than the debtor's attorney or an employee of such an attorney, who prepares for compensation a document for filing.

“document for filing” means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

(b) **Offense.**—If a bankruptcy case or related proceeding is dismissed because of a knowing attempt by a bankruptcy petition preparer in any manner to

disregard the requirements of title 11, United States Code, or the Federal Rules of Bankruptcy Procedure, the bankruptcy petition preparer shall be fined under this title, imprisoned not more than 1 year, or both.

Added Pub.L. 103-394, Title III, § 312(a)(1)(B), October 22, 1994, 108 Stat. 4140.

§ 157. Bankruptcy fraud

A person who, having devised or intending to devise a scheme or artifice to defraud and for the purpose of executing or concealing such a scheme or artifice or attempting to do so—

(1) files a petition under title 11;

(2) files a document in a proceeding under title 11; or

(3) makes a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding under title 11, at any time before or after the filing of the petition, or in relation to a proceeding falsely asserted to be pending under such title,

shall be fined under this title, imprisoned not more than 5 years, or both.

Added Pub.L. 103-394, Title III, § 312(a)(1)(B), October 22, 1994, 108 Stat. 4140.

CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

§ 1961. Definitions

As used in this chapter—

(1) “racketeering activity” means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461–1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a

witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581–1588 (relating to peonage and slavery), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341–2346 (relating to trafficking in contraband cigarettes), sections 2421–24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, or (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain;

(2) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) “person” includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) “enterprise” includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) “pattern of racketeering activity” requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) “unlawful debt” means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) “racketeering investigator” means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) “racketeering investigation” means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) “documentary material” includes any book, paper, document, record, recording, or other material; and

(10) “Attorney General” includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

Added Pub.L. 91-452, Title IX, § 901(a), Oct. 15, 1970, 84 Stat. 941, and amended Pub.L. 95-575, § 3(c), Nov. 2, 1978, 92 Stat. 2465; Pub.L. 95-598, Title III, § 314(g), Nov. 6, 1978, 92 Stat. 2677; Pub.L. 98-473, Title II, §§ 901(g), 1020, Oct. 12, 1984, 98 Stat. 2136, 2143; Pub.L. 98-547, Title II, § 205, Oct. 25, 1984, 98 Stat. 2770; Pub.L. 99-570, Title XIII, § 1365(b), Oct. 27, 1986, 100 Stat. 3207-35; Pub.L. 99-646, § 50(a), Nov. 10, 1986, 100 Stat. 3605; Pub.L. 100-690, Title VII, §§ 7013, 7020(c), 7032, 7054, 7514, Nov. 18, 1988, 102 Stat. 4395, 4396, 4398, 4402, 4489; Pub.L. 101-73, Title IX, § 968, Aug. 9, 1989, 103 Stat. 506; Pub.L. 101-647, Title XXXV, § 3560, Nov. 29, 1990, 104 Stat. 4927; Pub.L. 103-322, Title IX, § 90104, Title XVI, § 160001(f), Title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 1987, 2037, 2150; Pub.L. 103-394, Title III, § 312(b), Oct. 22, 1994, 108 Stat. 4140; Pub.L. 104-132, Title IV, § 433, Apr. 24, 1996, 110 Stat. 1274; Pub.L. 104-153, § 3, July 2, 1996, 110 Stat. 1386; Pub.L. 104-208, Div. C, Title II, § 202, Sept. 30, 1996, 110 Stat. 3009-565; Pub.L. 104-294, Title VI, §§ 601(b)(3), (i)(3), 604(b)(6), Oct. 11, 1996, 110 Stat. 3499, 3501, 3506.

Library References:

C.J.S. RICO (Racketeer Influenced and Corrupt Organizations) §§ 2 et seq.
West's Key No. Digests, Racketeer Influenced and Corrupt Organizations §1 et seq.

CHAPTER 119—WIRE INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

§ 2516. Authorization for interception of wire, oral, or electronic communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

(a) any offense punishable by death or by imprisonment for more than one year under sections 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy Act of 1954), section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel), or under the following chapters of this title: chapter 37 (relating to espionage), chapter 90 (relating to protection of trade secrets), chapter 105 (relating to sabotage), chapter 115 (relating to treason), chapter 102 (relating to riots), chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy);

(b) a violation of section 186 or section 501(c) of title 29, United States Code (dealing with restrictions on payments and loans to labor organizations), or any offense which involves murder, kidnapping, robbery, or extortion, and which is punishable under this title;

(c) any offense which is punishable under the following sections of this title: section 201 (bribery of public officials and witnesses), section 215 (relating to bribery of bank officials), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1032 (relating to concealment of assets), section 1084 (transmission of wagering information), section 751 (relating to escape), section 1014 (relating to loans and credit applications generally; renewals and discounts), sections 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1751 (Presidential and Presidential staff assassination, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1958 (relating to use of interstate commerce facilities in the commission of murder for hire), section 1959 (relating to violent crimes in aid of racketeering activity), section 1954 (offer, acceptance,

or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), section 1343 (fraud by wire, radio, or television), section 1344 (relating to bank fraud), sections 2251 and 2252 (sexual exploitation of children), sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities), section 38 (relating to aircraft parts fraud), section 1963 (violations with respect to racketeer influenced and corrupt organizations), section 115 (relating to threatening or retaliating against a Federal official), and section 1341 (relating to mail fraud), section 351 (violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnapping, and assault), section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), section 175 (relating to biological weapons), section 1992 (relating to wrecking trains), a felony violation of section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), section 1544 (relating to misuse of passports), or section 1546 (relating to fraud and misuse of visas, permits, and other documents);

(d) any offense involving counterfeiting punishable under section 471, 472, or 473 of this title;

(e) any offense involving fraud connected with a case under title 11 or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs, marihuana, or other dangerous drugs, punishable under any law of the United States;

(f) any offense including extortionate credit transactions under sections 892, 893, or 894 of this title;

(g) a violation of section 5322 of title 31, United States Code (dealing with the reporting of currency transactions);

(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

(i) any felony violation of chapter 71 (relating to obscenity) of this title;

(j) any violation of section 60123(b) (relating to destruction of a natural gas pipeline) or section 46502 (relating to aircraft piracy) of title 49;

(k) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act);

(l) the location of any fugitive from justice from an offense described in this section;

(m) a violation of section 274, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324, 1327, or 1328) (relating to the smuggling of aliens);

(n) any felony violation of sections 922 and 924 of title 18, United States Code (relating to firearms);

(o) any violation of section 5861 of the Internal Revenue Code of 1986 (relating to firearms);

(p)* a felony violation of section 1028 (relating to production of false identification documents), section 1542 (relating to false statements in passport applications), section 1546 (relating to fraud and misuse of visas, permits, and other documents) of this title or a violation of section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens);

(p)* any conspiracy to commit any offense described in any subparagraph of this paragraph.

(2) The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marihuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one year, designated in any applicable State statute authorizing such interception, or any conspiracy to commit any of the foregoing offenses.

(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.

Added Pub.L. 90-351, Title III, § 802, June 19, 1968, 82 Stat. 216; amended Pub.L. 91-452, Title VIII, § 810, Title IX, § 902(a), Title XI, § 1103, Oct. 15, 1970, 84 Stat. 940, 947, 959; Pub.L. 91-644, Title IV, § 16, Jan. 2, 1971, 84 Stat. 1891; Pub.L. 95-598, Title III, § 314(h), Nov. 6, 1978, 92 Stat. 2677; Pub.L. 97-

* So in original. Two subpars. (p) have been enacted.

285, §§ 2(e), 4(e), Oct. 6, 1982, 96 Stat. 1220, 1221; Pub.L. 98-292, § 8, May 21, 1984, 98 Stat. 206; Pub.L. 98-473, Title II, § 1203(c), Oct. 12, 1984, 98 Stat. 2152; Pub.L. 99-508, Title I, §§ 101(c)(1)(A), 104, 105, Oct. 21, 1986, 100 Stat. 1851, 1855; Pub.L. 99-570, Title I, § 1365(c), Oct. 27, 1986, 100 Stat. 3207-35; Pub.L. 100-690, Title VI, § 6461, Title VII, §§ 7036, 7053(d), 7525, Nov. 18, 1988, 102 Stat. 4374, 4399, 4402, 4502; Pub.L. 101-298, § 3(b), May 22, 1990, 104 Stat. 203; Pub.L. 101-647, Title XXV, § 2531, Title XXXV, § 3568, Nov. 29, 1990, 104 Stat. 4879, 4928; Pub.L. 103-272, § 5(e)(11), July 5, 1994, 108 Stat. 1374; Pub.L. 103-322, Title XXXIII, §§ 330011(c)(1), (q)(1), (r), 330021(1), Sept. 13, 1994, 108 Stat. 2144, 2145, 2150; Pub.L. 103-414, Title II, § 208, Oct. 25, 1994, 108 Stat. 4292; Pub.L. 103-429, § 7(a)(4)(A), Oct. 31, 1994, 108 Stat. 4389; Pub.L. 104-132, Title IV, § 434, Apr. 24, 1996, 110 Stat. 1274; Pub.L. 104-208, Div. C, Title II, § 201, Sept. 30, 1996, 110 Stat. 3009-564; Pub.L. 104-287, § 6(a)(2), Oct. 11, 1996, 110 Stat. 3398; Pub.L. 104-294, Title I, § 102, Title VI, § 601(d), Oct. 11, 1996, 110 Stat. 3491, 3499; Pub.L. 105-318, § 6(b), Oct. 30, 1998, 112 Stat. 3011; Pub.L. 106-181, Title V, § 506(c)(2)(B), Apr. 5, 2000, 114 Stat. 139.

Historical and Revision Notes

References in Text

The Atomic Energy Act of 1954, referred to in par. (1)(a), is classified generally to section 2011 et seq. of Title 42, U.S.C.A., The Public Health and Welfare.

Sections 2274 through 2277 of title 42 of the United States Code, referred to in par. (1)(a), are §§ 2274 through 2277 of Title 42, The Public Health and Welfare.

Sections 186 and 501(c) of title 29, United States Code, referred to in par. (1)(b), are §§ 186 and 501(c), respectively, of Title 29, Labor.

The Arms Export Control Act, referred to in par. (1)(k), is Pub.L. 90-629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified generally to chapter 39 (section 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

Sections 274, 277, and 278 of the Immigration and Nationality Act, referred to in par. (1)(m) and (p), are sections 274, 277, and 278 of Act June 27, 1952, c. 477, 66 Stat. 163, as amended, which are classified to section 1324, 1327, and 1328, respectively, of Title 8, Aliens and Nationality.

Codifications

Section 102 of Pub.L. 104-294, which directed that par. (1)(c) of this section be amended by inserting “chapter 90 (relating to protection of trade secrets),” following “chapter 37 (relating to espionage),”, could not be executed to

text, as par. (1)(c) does not contain phrase “chapter 37 (relating to espionage),”.

Amendment to par. (1)(c) by section 1365(c) of Pub.L. 99-570 was executed by inserting “section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity),” after “section 1955 (prohibition of business enterprises of gambling),” as the probable intent of Congress.

Amendment by section 601(d)(1) of Pub.L. 104-294, which directed that in par. (1)(l) “or” be struck out after the semicolon, could not be executed in view of the prior identical amendment by section 201(2) of Pub.L. 104-208.

Amendment by section 601(d)(2) of Pub.L. 104-294, which directed that in par. (1)(n) “or” be substituted for “and” following the semicolon, could not be executed as the word “and” does not appear at the end of par. (1)(n).

Amendments

2000 Amendments. Par. (1)(c), Pub.L. 106-181, § 506(c)(2)(B), inserted “section 38 (relating to aircraft parts fraud),” after “section 32 (relating to destruction of aircraft or aircraft facilities),”.

1998 Amendments. Par. (1)(a), Pub.L. 105-318, § 6(b) inserted “chapter 90 (relating to protection of trade secrets),” following “to espionage),”.

1996 Amendments. Par. (1)(c). Pub.L. 104-294, § 102, directed the insertion of “chapter 90 (relating to protection of trade secrets),” following “chapter 37 (relating to espionage),” which could not be executed to text. See Codification note set out under this section.

Pub.L. 104-208, § 201(1), added provisions relating to felony violation of section 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544 or 1546 of this title.

Par. (1)(j). Pub.L. 104-287, § 6(a)(2), amending Pub.L. 103-272, § 5(e)(11); Pub.L. 103-429, § 7(a)(4)(A), substituted “section 46502” for “46502”.

Par. (1)(l). Pub.L. 104-294, § 601(d)(1), directed that “or” be struck out after the semicolon, which could not be executed to text. See Codification note set out under this section.

Pub.L. 104-208, § 201(2), struck out “or” after the semicolon.

Par. (1)(m). Pub.L. 104-208, § 201(4), added par. (m). Former par. (m) redesignated (n).

Par. (1)(n). Pub.L. 104-294, § 601(d)(2), directed “or” be substituted for “and” following the semicolon, which could not be executed to text. See Codification note set out under this section.

Pub.L. 104-208, § 201(3), redesignated former par. (m) as (n).

Par. (1)(o), (p). Pub.L. 104-208, § 201(3), redesignated former pars. (n) and (o) as (o) and (p) [set first], respectively.

Pub.L. 104-132, § 434, added par. (o) and redesignated former par. (o) as (p) [set second].

1994 Amendments. Par. (1). Pub.L. 103-414, § 208, inserted “or acting Deputy Assistant Attorney General” following “Deputy Assistant Attorney General”.

Par. (1)(c). Pub.L. 103-322, § 330021(1), substituted “kidnaping” for “kidnaping” wherever appearing.

Par. (1)(j). Pub.L. 103-272, § 5(e)(11), as amended Pub.L. 103-429, § 7(a)(4)(A); Pub.L. 104-287, § 6(a)(2), substituted “section 60123(b) (relating to destruction of a natural gas pipeline) or section 46502 (relating to aircraft piracy) of title 49;” for “section 11(c)(2) of the Natural Gas Pipeline Safety Act of 1968 (relating to destruction of a natural gas pipeline) or subsection 902(i) or (n) of the Federal Aviation Act of 1958 (relating to aircraft piracy)”.

1990 Amendments. Par. (1)(c). Pub.L. 101-647, § 2531(1)(A) to (E), inserted before the provisions as indicated: “section 215 (relating to bribery of bank officials),” before “section 224”; “section 1014 (relating to loans and credit applications generally; renewals and discounts),” before “sections 1503;”; “section 1032 (relating to concealment of assets),” before “section 1084”; “section 1344 (relating to bank fraud),” before “sections 2251 and 2252”; and struck “the section in chapter 65 relating to destruction of an energy facility,” preceding “and section 1341 (relating to mail fraud)”.

Pub.L. 101-298, § 3(b), as amended Pub.L. 103-322, § 330011(c)(1), inserted “section 175 (relating to biological weapons),” following “section 33 (relating to destruction of motor vehicles or motor vehicle facilities)”.

Par. (1)(j). Pub.L. 101-647, § 2531(3), as amended Pub.L. 103-322, § 330011(r), substituted “any violation of section 11(c)(2) of the Natural Gas Pipeline Safety Act of 1968 (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 902 of the Federal Aviation Act of 1958 (relating to aircraft piracy)” for “any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code”. See Repeals note set out under this section.

Pub.L. 101-647, § 3568, which substituted “any violation of section 11(c)(2) of the Natural Gas Pipeline Safety Act of 1968 (relating to destruction of a natural gas pipeline) or section 902(i) or (n) of the Federal Aviation Act of 1958 (relating to aircraft piracy)” for “any violation of section 1679(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code”, was repealed by section 330011(q)(1) of Pub.L. 103-322. See Repeals note set out under this section.

Par. (1)(m), (n). Pub.L. 101-647, § 2531(2)(A)-(C), struck subpar. “(m) any conspiracy to commit any of the foregoing offenses.”; struck from subpar. (m) relating to firearms the word “and”; and substituted at the end of subpar. (n) “; and” for the period.

Par. (1)(o). Pub.L. 101-647, § 2531(2)(D), added subpar. (o).

1988 Amendments. Pub.L. 100-690, § 7036(a)(1), substituted “Associate Attorney General, or any” for “Associate Attorney General, any”.

Par. (1)(a). Pub.L. 100-690, § 7036(c)(1), substituted "(relating to riots)," for "(relating to riots);".

Par. (1)(c). Pub.L. 100-690, § 7036(a)(2), struck out comma following "to mail fraud)," , requiring no change in text.

Pub.L. 100-690, § 7036(b), substituted "section 2321" for "the second section 2320", and struck out "section 2252 or 2253 (sexual exploitation of children)," following "exploitation of children);".

Pub.L. 100-690, § 7053(d), substituted "1958" for "1952A", and "1959" for "1952B".

Par. (1)(i). Pub.L. 100-690, § 7525, added subpar. (i). Former subpar. (i) was redesignated (j).

Par. (1)(j). Pub.L. 100-690, § 7525, redesignated former subpar. (i) as (j). Former subpar. (j) was redesignated (k).

Pub.L. 100-690, § 7036(c)(2), struck out "or;" following "Export Control Act);".

Par. (1)(k). Pub.L. 100-690, § 7525, redesignated former subpar. (j) as (k). Former subpar. (k) was redesignated (l).

Pub.L. 100-690, § 7036(c)(3), substituted "section; or" for "section;".

Par. (1)(l). Pub.L. 100-690, § 7525, redesignated former subpar. (k) as (l). Former subpar. (l) was redesignated (m).

Par. (1)(m). Pub.L. 100-690, § 7525, redesignated former subpar. (l) as (m).

Par. (1)(m), (n). Pub.L. 100-690, § 6461, added subpars. (m) and (n).

1986 Amendments. Catchline. Pub.L. 99-508, § 101(c)(1)(A), substituted "wire, oral, or electronic communications" for "wire or oral communications".

Par. (1). Pub.L. 99-508, § 104, substituted "any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General in the Criminal Division specially designated for "or any Assistant Attorney General specially designated".

Par. (1)(a). Pub.L. 99-508, § 105(a)(5), added "section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel)," following "Atomic Energy Act of 1954.", "chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy)" following "(relating to riots)", and struck out "or" following "(relating to treason);".

Par. (1)(c). Pub.L. 99-570, § 1356(c), added references to section 1956 (laundering of monetary instruments) and section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity). See Codification note set out under this section.

Pub.L. 99-508, § 105(a)(1), added "section 751 (relating to escape)," following "wagering information).", "the second section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities)," following "stolen property).", "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952B (relating to violent crimes in aid of racketeering activity)," following "racketeering enterprises).", " , section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud)," following "corrupt organizations)", " , section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), or section 1992 (relating to wrecking trains)" following "Court assassinations, kidnapping, and assault)", and substituted "2312, 2313, 2314," for "2314" and "section 351" for "or section 351".

Par. (1)(h). Pub.L. 99-508, § 105(a)(3), added par. (h). Former par. (h) was redesignated (l).

Pars. (1)(i) to (k). Pub.L. 99-508, § 105(a)(3), added pars. (i) to (k).

Par. (1)(l). Pub.L. 99-508, § 105(a)(4), redesignated former par. (h) as (l).

Par. (2). Pub.L. 99-508, § 101(c)(1)(A), substituted "wire, oral, or electronic communications" for "wire or oral communications" wherever appearing in text.

Par. (3). Pub.L. 99-508, § 105(b), added par. (3).

1984 Amendments. Par. (1). Pub.L. 98-473, § 1203(c)(4), added "Deputy Attorney General, Associate Attorney General," after "Attorney General".

Par. (1)(c). Pub.L. 98-473, § 1203(c)(1), added “section 1343 (fraud by wire, radio, or television), section 2252 or 2253 (sexual exploitation of children),” after “section 664 (embezzlement from pension and welfare funds),”.

Pub.L. 98-292 added “sections 2251 and 2252 (sexual exploitation of children),” after “section 664 (embezzlement from pension and welfare funds),”.

Pub.L. 98-473, § 1203(c)(2), added references to sections 1512 and 1513 after “1503”.

Par. (1)(g). Pub.L. 98-473, § 1203(c)(3), added par. (g). Former par. (g) was redesignated par. (h).

Par. (1)(h). Pub.L. 98-473, § 1203(c)(3), redesignated par. (g) as par. (h).

1982 Amendments. Par. (1)(c). Pub.L. 97-285, §§ 2(e), 4(e), substituted “(Presidential and Presidential staff assassination, kidnaping, and assault)” for “(Presidential assassinations, kidnaping, and assault)” following “section 1751” and substituted “(violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnaping, and assault)” for “(violations with respect to congressional assassination, kidnaping, and assault)” following “section 351”.

1978 Amendments. Par. (1)(e). Pub.L. 95-598 substituted “fraud connected with a case under title 11” for “bankruptcy fraud”.

1971 Amendments. Par. (1)(c). Pub.L. 91-644 added provision authorizing interception of communications with respect to section 351 offense (violations with respect to congressional assassination, kidnaping, and assault).

1970 Amendments. Par. (1)(c). Pub.L. 91-452 added provisions authorizing applicability to sections 844(d), (e), (f), (g), (h), or (i), 1511, 1955, and 1963 of this title.

Effective and Applicability Provisions

2000 Acts. Amendment by Pub.L. 106-181 applicable only to fiscal years beginning after September 30, 1999, see section 3 of Pub.L. 106-181, set out as a note under section 106 of Title 49.

1996 Acts. Section 6(a) of Pub.L. 104-287 provided in part that amendment by such section 6(a), amending this section and section 6101 of Title 31, Money and Finance, was effective July 5, 1994.

1994 Acts. Section 7(a) of Pub.L. 103-429 provided in part that amendment of this sec-

tion by section 7(a) of Pub.L. 103-429 is effective July 5, 1994.

Section 330011(c)(1) of Pub.L. 103-322 provided in part that the amendment made by such section, amending section 3(b) of Pub.L. 101-298, was to take effect on the date on which section 3(b) of Pub.L. 101-298 took effect [section 3(b) of Pub.L. 101-298 took effect on the date of enactment of Pub.L. 101-298, which was approved May 22, 1990].

Section 330011(q)(1) of Pub.L. 103-322 provided in part that the amendment made by such section, repealing section 3568 of Pub.L. 101-647, was to take effect on the date section 3568 of Pub.L. 101-647 took effect [section 3568 of Pub.L. 101-647 took effect on the date of enactment of Pub.L. 101-647, which was approved Nov. 29, 1990].

Section 330011(r) of Pub.L. 103-322 provided in part that the amendment made by such section, amending language of section 2531(3) of Pub.L. 101-647, was to take effect on the date section 2531(3) of Pub.L. 101-647 took effect [section 2531(3) of Pub.L. 101-647 took effect on the date of enactment of Pub.L. 101-647, which was approved Nov. 29, 1990].

1986 Acts. Except as otherwise provided in section 111 of Pub.L. 99-508, amendment by Pub.L. 99-508 effective 90 days after Oct. 21, 1986, see section 111 of Pub.L. 99-508 set out as a note under section 2510 of this title.

1978 Acts. Amendment by Pub.L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub.L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

Repeals. Section 3568 of Pub.L. 101-647, which made an identical amendment to par. (1)(j) of this section as did section 2531(3) of Pub.L. 101-647, was repealed by section 330011(q)(1) of Pub.L. 103-322.

Severability of Provisions.

If any provision of Division C of Pub.L. 104-208 or the application of such provision to any person or circumstances is held to be unconstitutional, the remainder of Division C of Pub.L. 104-208 and the application of the provisions of Division C of Pub.L. 104-208 to any person or circumstance not to be affected thereby, see section 1(e) of Pub.L. 104-208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

Amendment by section 314 of Pub.L. 95-598 not to affect the application of this section to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1,

1979, in connection with a case commenced 95-598, set out preceding section 101 of Title before such date, see section 403(d) of Pub.L. 11, Bankruptcy.

Library References:

C.J.S. Telegraphs, Telephones, Radio and Television §§ 122, 287, 288.
West's Key No. Digests, Telecommunications ⇨491-498.

CHAPTER 203—ARREST AND COMMITMENT**§ 3057. Bankruptcy investigations**

(a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, shall report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed. Where one of such officers has made such report, the others need not do so.

(b) The United States attorney thereupon shall inquire into the facts and report thereon to the judge, and if it appears probable that any such offense has been committed, shall without delay, present the matter to the grand jury, unless upon inquiry and examination he decides that the ends of public justice do not require investigation or prosecution, in which case he shall report the facts to the Attorney General for his direction.

June 25, 1948, c. 645, 62 Stat. 818; May 24, 1949, c. 139, § 48, 63 Stat. 96; Nov. 6, 1978, Pub.L. 95-598, Title III, § 314(i), 92 Stat. 2677.

Library References:

C.J.S. Bankruptcy § 473; Criminal Law §§ 1724, 1729-1731.
West's Key No. Digests, Bankruptcy ⇨3862, Criminal Law ⇨1222.1.

CHAPTER 213—LIMITATIONS**§ 3284. Concealment of bankrupt's assets**

The concealment of assets of a debtor in a case under Title 11 shall be deemed to be a continuing offense until the debtor shall have been finally discharged or a discharge denied, and the period of limitations shall not begin to run until such final discharge or denial of discharge.

June 25, 1948, c. 645, 62 Stat. 828; Nov. 6, 1978, Pub.L. 95-598, Title III, § 314(k), 92 Stat. 2678.

Library References:

C.J.S. Bankruptcy §§ 472, 473; Criminal Law §§ 200, 201.
West's Key No. Digests, Bankruptcy ⇨3861-3863; Criminal Law ⇨150.

PART V—IMMUNITY OF WITNESSES**§ 6001. Definitions**

As used in this chapter—

(1) “agency of the United States” means any executive department as defined in section 101 of title 5, United States Code, a military department as defined in section 102 of title 5, United States Code, the Nuclear Regulatory Commission, the Board of Governors of the Federal Reserve System, the China Trade Act registrar appointed under 53 Stat. 1432 (15 U.S.C. sec. 143), the Commodity Futures Trading Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the Surface Transportation Board, the National Labor Relations Board, the National Transportation Safety Board, the Railroad Retirement Board, an arbitration board established under 48 Stat. 1193 (45 U.S.C. sec. 157), the Securities and Exchange Commission, or a board established under 49 Stat. 31 (15 U.S.C. sec. 715d);

(2) “other information” includes any book, paper, document, record, recording, or other material;

(3) “proceeding before an agency of the United States” means any proceeding before such an agency with respect to which it is authorized to issue subpoenas and to take testimony or receive other information from witnesses under oath; and

(4) “court of the United States” means any of the following courts: the Supreme Court of the United States, a United States court of appeals, a United States district court established under chapter 5, title 28, United States Code, a United States bankruptcy court established under chapter 6, title 28, United States Code, the District of Columbia Court of Appeals, the Superior Court of the District of Columbia, the District Court of Guam, the District Court of the Virgin Islands, the United States Claims Court, the Tax Court of the United States, the Court of International Trade, and the Court of Appeals for the Armed Forces.

Added Pub.L. 91-452, Title II, § 201(a), Oct. 15, 1970, 84 Stat. 926, and amended Pub.L. 95-405, § 25, Sept. 30, 1978, 92 Stat. 877; Pub.L. 95-598, Title III, § 314(l), Nov. 6, 1978, 92 Stat. 2678; Pub.L. 96-417, Title VI, § 601(1), Oct. 10, 1980, 94 Stat. 1744; Pub.L. 97-164, Title I, § 164(1), Apr. 2, 1982, 96 Stat. 50; Pub.L. 102-550, Title XV, § 1543, Oct. 28, 1992, 106 Stat. 4069; Pub.L. 103-272, § 4(d), July 5, 1994, 108 Stat. 1361; Pub.L. 103-322, Title XXXIII, § 330013(2), (3), Sept. 13, 1994, 108 Stat. 2146; Pub.L. 103-337, Div. A, Title IX, § 924(d)(1)(B), Oct. 5, 1994, 108 Stat. 2832; Pub.L. 104-88, Title III, § 303(2), Dec. 29, 1995, 109 Stat. 943.

Library References:

C.J.S. Bankruptcy §§ 5, 9; Criminal Law §§ 78-86, Witnesses §§ 16, 430 et seq.
West's Key No. Digests, Bankruptcy Ⓒ2124.1; Criminal Law Ⓒ42; Witnesses Ⓒ5, 292-310.

TITLE 28

JUDICIARY AND JUDICIAL PROCEDURE

PART I—ORGANIZATION OF COURTS

CHAPTER 6—BANKRUPTCY JUDGES

Sec.

- 151. Designation of bankruptcy courts.
 - 152. Appointment of bankruptcy judges.
 - 153. Salaries; character of service.
 - 154. Division of businesses; chief judge.
 - 155. Temporary transfer of bankruptcy judges.
 - 156. Staff; expenses.
 - 157. Procedures.
 - 158. Appeals.
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§ 151. Designation of bankruptcy courts

In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district. Each bankruptcy judge, as a judicial officer of the district court, may exercise the authority conferred under this chapter with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court, except as otherwise provided by law or by rule or order of the district court.

Added Pub.L. 98-353, Title I, § 104(a), July 10, 1984, 98 Stat. 336.

Historical and Revision Notes

Effective Date of 1984 Amendments.
Section 122 of Pub.L. 98-353, July 10, 1984, 98 Stat. 346, provided that:

“(a) Except as otherwise provided in this section, this title and the amendments made by this title [Title I of Pub.L. 98-353, enacting sections 151 to 158, 1408 to 1412, and 1452 of Title 28, Judiciary and Judicial Procedure; amending sections 372, 634, 957, 1334, 1360, and 1930 of Title 28, sections 8331, 8334, 8336, 8339, 8341, and 8344 of Title 5, Government Organization and Employees; and section 105 of Title 11, Bankruptcy; enacting provisions set out as notes under sections 151, 152, 153, 634, and 1334 of Title 28 and section 8331 of Title 5; and repealing provisions set out as notes preceding sections 151 and 1471 of Title

28] shall take effect on the date of the enactment of this Act [July 10, 1984].

“(b) Section 1334(c)(2) of title 28, United States Code, and section 1411(a) of title 28, United States Code, as added by this Act, shall not apply with respect to cases under title 11 of the United States Code [Title 11, Bankruptcy] that are pending on the date of enactment of this Act [July 10, 1984], or to proceedings arising in or related to such cases.

“(c) Sections 108(b) [set out as a note under section 634 of Title 28], 113 [amending section 402(b) of Pub.L. 95-598, set out as a note preceding chapter 1 of Title 11, Bankruptcy], and 121(e) [set out as a note below] shall take effect on June 27, 1984.”

Term of Office of Bankruptcy Judges Serving on March 31, 1984. Section 2 of Pub.L. 98-249, Mar. 31, 1984, 98 Stat. 116, provided that: "The term of office of any bankruptcy judge who was serving on March 31, 1984 and of any bankruptcy judge who is serving on the date of the enactment of this Act [Mar. 31, 1984] is extended to and shall expire on May 1, 1984."

Term of Office of Bankruptcy Judges Serving on April 30, 1984. Section 2 of Pub.L. 98-271, Apr. 30, 1984, 98 Stat. 163, provided that: "The term of office of any bankruptcy judge who was serving on April 30, 1984, and of any bankruptcy judge who is serving on the date of the enactment of this Act [Apr. 30, 1984] is extended to and shall expire on May 25, 1984."

Term of Office of Bankruptcy Judges Serving on May 25, 1984. Section 2 of Pub.L. 98-299, May 25, 1984, 98 Stat. 214, provided that: "The term of office of any bankruptcy judge who was serving on May 25, 1984, and of any bankruptcy judge who is

serving on the date of the enactment of this Act [May 25, 1984] is extended to and shall expire on June 20, 1984."

Term of Office of Bankruptcy Judges Serving on June 20, 1984. Section 2 of Pub.L. 98-325, June 20, 1984, 98 Stat. 268, provided that: "The term of office of any bankruptcy judge who was serving on June 20, 1984, and of any bankruptcy judge who is serving on the date of the enactment of this Act [June 20, 1984] is extended to and shall expire on June 27, 1984."

Term of Office of Bankruptcy Judges Serving on June 27, 1984. Section 121(e) of Pub.L. 98-353, July 10, 1984, 98 Stat. 346, provided that: "The term of office of any bankruptcy judge who was serving on June 27, 1984, is extended to and shall expire at the end of the day of enactment of this Act [July 10, 1984]."

[Section 121(e) of Pub.L. 98-353 effective June 27, 1984, see section 122(c) of Pub.L. 98-353, set out as an Effective Date note above.]

Library References:

C.J.S. Bankruptcy §§ 5 et seq.
West's Key No. Digests, Bankruptcy ⇨2121-2126.

§ 152. Appointment of bankruptcy judges

(a)(1) The United States court of appeals for the circuit shall appoint bankruptcy judges for the judicial districts established in paragraph (2) in such numbers as are established in such paragraph. Such appointments shall be made after considering the recommendations of the Judicial Conference submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor. Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

(2) The bankruptcy judges appointed pursuant to this section shall be appointed for the several judicial districts as follows:

Districts

Judges

Alabama:	
Northern	5
Middle	2
Southern	2
Alaska	2
Arizona	7
Arkansas:	
Eastern and Western	3

Districts	Judges
California:	
Northern	9
Eastern	6
Central	21
Southern	4
Colorado	5
Connecticut	3
Delaware	1
District of Columbia	1
Florida:	
Northern	1
Middle	8
Southern	5
Georgia:	
Northern	8
Middle	2
Southern	2
Middle and Southern	1
Hawaii	1
Idaho	2
Illinois:	
Northern	10
Central	3
Southern	1
Indiana:	
Northern	3
Southern	4
Iowa:	
Northern	2
Southern	2
Kansas	4
Kentucky:	
Eastern	2
Western	3
Louisiana:	
Eastern	2
Middle	1
Western	3
Maine	2
Maryland	4
Massachusetts	5
Michigan:	
Eastern	4
Western	3
Minnesota	4
Mississippi:	
Northern	1
Southern	2
Missouri:	
Eastern	3
Western	3
Montana	1
Nebraska	2
Nevada	3
New Hampshire	1
New Jersey	8

Districts	Judges
New Mexico	2
New York:	
Northern	2
Southern	9
Eastern	6
Western	3
North Carolina:	
Eastern	2
Middle	2
Western	2
North Dakota	1
Ohio:	
Northern	8
Southern	7
Oklahoma:	
Northern	2
Eastern	1
Western	3
Oregon	5
Pennsylvania:	
Eastern	5
Middle	2
Western	4
Puerto Rico	2
Rhode Island	1
South Carolina	2
South Dakota	2
Tennessee:	
Eastern	3
Middle	3
Western	4
Texas:	
Northern	6
Eastern	2
Southern	6
Western	4
Utah	3
Vermont	1
Virginia:	
Eastern	5
Western	3
Washington:	
Eastern	2
Western	5
West Virginia:	
Northern	1
Southern	1
Wisconsin:	
Eastern	4
Western	2
Wyoming	1

(3) Whenever a majority of the judges of any court of appeals cannot agree upon the appointment of a bankruptcy judge, the chief judge of such court shall make such appointment.

(4) The judges of the district courts for the territories shall serve as the bankruptcy judges for such courts. The United States court of appeals for the circuit within which such a territorial district court is located may appoint bankruptcy judges under this chapter for such district if authorized to do so by the Congress of the United States under this section.

(b)(1) The Judicial Conference of the United States shall, from time to time, and after considering the recommendations submitted by the Director of the Administrative Office of the United States Courts after such Director has consulted with the judicial council of the circuit involved, determine the official duty stations of bankruptcy judges and places of holding court.

(2) The Judicial Conference shall, from time to time, submit recommendations to the Congress regarding the number of bankruptcy judges needed and the districts in which such judges are needed.

(3) Not later than December 31, 1994, and not later than the end of each 2-year period thereafter, the Judicial Conference of the United States shall conduct a comprehensive review of all judicial districts to assess the continuing need for the bankruptcy judges authorized by this section, and shall report to the Congress its findings and any recommendations for the elimination of any authorized position which can be eliminated when a vacancy exists by reason of resignation, retirement, removal, or death.

(c) Each bankruptcy judge may hold court at such places within the judicial district, in addition to the official duty station of such judge, as the business of the court may require.

(d) With the approval of the Judicial Conference and of each of the judicial councils involved, a bankruptcy judge may be designated to serve in any district adjacent to or near the district for which such bankruptcy judge was appointed.

(e) A bankruptcy judge may be removed during the term for which such bankruptcy judge is appointed, only for incompetence, misconduct, neglect of duty, or physical or mental disability and only by the judicial council of the circuit in which the judge's official duty station is located. Removal may not occur unless a majority of all of the judges of such council concur in the order of removal. Before any order of removal may be entered, a full specification of charges shall be furnished to such bankruptcy judge who shall be accorded an opportunity to be heard on such charges.

Added Pub.L. 98-353, Title I, § 104(a), July 10, 1984, 98 Stat. 336, and amended Pub.L. 99-554, Title I, § 101, Oct. 27, 1986, 100 Stat. 3088; Pub.L. 100-587, Nov. 3, 1988, 102 Stat. 2982; Pub.L. 101-650, Title III, § 304, Dec. 1, 1990, 104 Stat. 5105; Pub.L. 102-361, §§ 2-4, Aug. 26, 1992, 106 Stat. 965.

Historical and Revision Notes

Effective Date of 1986 Amendment. Amendment by Pub.L. 99-554 effective on Oct. 27, 1986, see section 302(b) of Pub.L. 99-554, set out as a note under section 581 of this title.

Effective Date. For effective date of amendments by Title I of Pub.L. 98-353, see section 122 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 346, set out as an Effective Date

of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.

Temporary Appointment of Additional Judges. Section 3 of Pub.L. 102-361 provided that:

“(a) Appointments.—The following bankruptcy judges shall be appointed in the man-

ner prescribed in section 152(A)(1) of Title 28, United States Code [subsec. (a)(1) of this section]:

“(1) 1 additional bankruptcy judge for the northern district of Alabama.

“(2) 1 additional bankruptcy judge for the district of Colorado.

“(3) 1 additional bankruptcy judge for the district of Delaware.

“(4) 1 additional bankruptcy judge for the southern district of Illinois.

“(5) 1 additional bankruptcy judge for the district of New Hampshire.

“(6) 1 additional bankruptcy judge for the middle district of North Carolina.

“(7) 1 additional bankruptcy judge for the district of Puerto Rico.

“(8) 1 additional bankruptcy judge for the district of South Carolina.

“(9) 1 additional bankruptcy judge for the eastern district of Tennessee.

“(10) 1 additional bankruptcy judge for the western district of Texas.

“(b) Vacancies.—The first vacancy in the office of bankruptcy judge in each of the judicial districts set forth in subsection (a), resulting from the death, retirement, resignation, or removal of a bankruptcy judge, and occurring 5 years or more after the date of the enactment of this Act [Aug. 26, 1992], shall not be filled. In the case of a vacancy resulting from the expiration of the term of a bankruptcy judge not described in the preceding sentence, that judge shall be eligible for reappointment as a bankruptcy judge in that district.”

Section 4 of Pub.L. 102-361 added subsec. (b)(3).

Extension and Termination of Term of Office of Part-Time Bankruptcy Judge Serving on July 2, 1986, In District of Oregon, Western District of Michigan, and Eastern District of Oklahoma. Pub.L. 99-349, Title I, c. II, July 2, 1986, 100 Stat. 718, provided that: “Notwithstanding the provisions of section 106(b)(1) of the Bankruptcy Amendments and Federal Judgeship Act of 1984 [section 106(b)(1) of Pub.L. 98-353, set out as a note under this section], a bankruptcy judge serving on a part-time basis on the date of enactment of this Act [July 2, 1986] may continue to serve as a part-time judge for such district until December 31, 1986, or until such

time as a full-time bankruptcy judge for such district is appointed, whichever is earlier: *Provided*, That these provisions shall apply only to part-time bankruptcy judges serving in the district of Oregon, the western district of Michigan, and the eastern district of Oklahoma.”

Extension and Termination of Term of Office of Bankruptcy Judge and Part-Time Bankruptcy Judge Serving on July 10, 1984; Practice of Law by Part-Time Bankruptcy Judge. Section 106 of Pub.L. 98-353 provided that:

“(a) Notwithstanding section 152 of title 28, United States Code, as added by this Act, the term of office of a bankruptcy judge who is serving on the date of enactment of this Act [July 10, 1984] is extended to and expires four years after the date such bankruptcy judge was last appointed to such office or on October 1, 1986, whichever is later.

“(b)(1) Notwithstanding section 153(a) of title 28, United States Code, as added by this Act, and notwithstanding subsection (a) of this section [subsec. (a) of this note], a bankruptcy judge serving on a part-time basis on the date of enactment of this Act may continue to serve on such basis for a period not to exceed two years from the date of enactment of this Act.

“(2) Notwithstanding the provisions of section 153(b) of title 28, United States Code, a bankruptcy judge serving on a part-time basis may engage in the practice of law but may not engage in any other practice, business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of such bankruptcy judge's duties as a judicial officer. The Judicial Conference of the United States may promulgate appropriate rules and regulations to implement this paragraph.”

[For effective date of section 106 of Pub.L. 98-353, see section 122 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 346, set out as an Effective Date of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.]

Appointment to Fill Vacancies; Nominations; Qualifications. Section 120 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 344, as amended by Pub.L. 99-554, Title I, § 102, Oct. 27, 1986, 100 Stat. 3089, provided that:

“(a)(1) Whenever a court of appeals is authorized to fill a vacancy that occurs on a bankruptcy court of the United States, such court of appeals shall appoint to fill that vacan-

cy a person whose character, experience, ability, and impartiality qualify such person to serve in the Federal judiciary.

“(2) It is the sense of the Congress that the courts of appeals should consider for appointment under section 152 of title 28, United States Code, to the first vacancy which arises after the date of the enactment of this Act [July 10, 1984] in the office of each bankruptcy judge, the bankruptcy judge who holds such office immediately before such vacancy arises, if such bankruptcy judge requests to be considered for such appointment.

“(b) The judicial council of the circuit involved shall assist the court of appeals by evaluating potential nominees and by recommending to such court for consideration for appointment to each vacancy on the bankruptcy court persons who are qualified to be bankruptcy judges under regulations prescribed by the Judicial Conference of the United States. In the case of the first vacancy which arises after the date of the enactment of this Act [July 10, 1984] in the office of each bankruptcy judge, such potential nominees shall include the bankruptcy judge who holds such office immediately before such vacancy arises, if such bankruptcy judge requests to be considered for such appointment and the judicial council determines that such judge is qualified under subsection (c) of this section to continue to serve. Such potential nominees shall receive consideration equal to that given all other potential nominees for such position.

“(c) Before transmitting to the court of appeals the names of the persons the judicial council for the circuit deems best qualified to fill any existing vacancy, the judicial council shall have determined that—

“(1) public notice of such vacancy has been given and an effort has been made, in the case of each such vacancy, to identify qualified candidates, without regard to race, color, sex, religion, or national origin,

“(2) such persons are members in good standing of at least one State bar, the District of Columbia bar, or the bar of the Commonwealth of Puerto Rico, and members in good standing of every other bar of which they are members,

“(3) such persons possess, and have a reputation for, integrity and good character,

“(4) such persons are of sound physical and mental health,

“(5) such persons possess and have demonstrated commitment to equal justice under law,

“(6) such persons possess and have demonstrated outstanding legal ability and competence, as evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and court processes, and

“(7) such persons [*sic*] demeanor, character, and personality indicate that they would exhibit judicial temperament if appointed to the position of United States bankruptcy judge.”

[For effective date of section 120 of Pub.L. 98-353, see section 122 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 346, set out as an Effective Date of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.]

Library References:

C.J.S. Bankruptcy § 7.

West's Key No. Digests, Bankruptcy ☞2123.

§ 153. Salaries; character of service

(a) Each bankruptcy judge shall serve on a full-time basis and shall receive as full compensation for his services, a salary at an annual rate that is equal to 92 percent of the salary of a judge of the district court of the United States as determined pursuant to section 135, to be paid at such times as the Judicial Conference of the United States determines.

(b) A bankruptcy judge may not engage in the practice of law and may not engage in any other practice, business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of such bankruptcy judge's duties as a judicial officer. The Conference may promulgate appropriate rules and regulations to implement this subsection.

(c) Each individual appointed under this chapter shall take the oath or affirmation prescribed by section 453 of this title before performing the duties of the office of bankruptcy judge.

(d) A bankruptcy judge appointed under this chapter shall be exempt from the provisions of subchapter I of chapter 63 of title 5.

Added Pub.L. 98-353, Title I, § 104(a), July 10, 1984, 98 Stat. 338; and amended Pub.L. 100-202, § 101(a) [Title IV, § 408(a)], Dec. 22, 1987, 101 Stat. 1329-26; Pub.L. 100-702, Title X, § 1003(a)(1), Nov. 19, 1988, 102 Stat. 4665.

Historical and Revision Notes

Effective Date of 1987 Amendment. Section 101(a) [Title IV, § 408(d)] of Pub.L. 100-202 provided that: "This section [amending this section, section 634 of this title, and section 356 of title 2, The Congress] shall become effective October 1, 1988, and any salary affected by the provisions of this section shall be adjusted at the beginning of the first applicable pay period commencing on or after such date of enactment."

Effective Date. For effective date of amendments by Title I of Pub.L. 98-353, see section 122 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 346, set out as an Effective Date of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.

Transition Provisions. Section 1003(b) of Pub.L. 100-702 provided that:

"(1) If an individual who is exempted from the Leave Act by operation of amendments under this section [amending this section and sections 156, 631, 634, 712, 752, and 794 of this title] and who was previously subject to the provisions of subchapter I of chapter 63 of Title 5, United States Code [section 6301 et seq. of Title 5, Government Organization and Employees] without a break in service, again becomes subject to this subchapter on completion of his service as an exempted officer, the unused annual leave and sick leave standing to his credit

when he was exempted from this subchapter is deemed to have remained to his credit.

"(2) In computing an annuity under section 8339 of Title 5, United States Code [section 8339 of Title 5], the total service of a person specified in paragraph (1) of this subsection who retired on an immediate annuity or dies leaving a survivor or survivors entitled to an annuity includes, without regard to the limitations imposed by subsection (f) of section 8339 of title 5, United States Code, the days of unused sick leave standing to his credit when he was exempted from subchapter I of chapter 63 of title 5, United States Code, except that these days will not be counted in determining average pay or annuity eligibility."

Continuation of Salaries of Bankruptcy Judges in Effect on June 27, 1984. Section 105(a) of Pub.L. 98-353, July 10, 1984, 98 Stat. 342, provided that: "The salary of a bankruptcy judge in effect on June 27, 1984, shall remain in effect until changed as a result of a determination or adjustment made pursuant to section 153(a) of title 28, United States Code, as added by this Act."

[For effective date of section 105 of Pub.L. 98-353, see section 122 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 346, set out as an Effective Date of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.]

Library References:

C.J.S. Bankruptcy § 7.
West's Key No. Digests, Bankruptcy Ⓒ2123.

§ 154. Division of businesses; chief judge

(a) Each bankruptcy court for a district having more than one bankruptcy judge shall by majority vote promulgate rules for the division of business among the bankruptcy judges to the extent that the division of business is not otherwise provided for by the rules of the district court.

(b) In each district court having more than one bankruptcy judge the district court shall designate one judge to serve as chief judge of such bankruptcy court. Whenever a majority of the judges of such district court cannot agree upon the designation as chief judge, the chief judge of such district court shall make such designation. The chief judge of the bankruptcy court shall ensure that the rules of the bankruptcy court and of the district court are observed and that the business of the bankruptcy court is handled effectively and expeditiously.

Added Pub.L. 98-353, Title I, § 104(a), July 10, 1984, 98 Stat. 339.

Historical and Revision Notes

Effective Date. For effective date of amendments by Title I of Pub.L. 98-353, see section 122 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 346, set out as an Effective Date of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy § 5.
West's Key No. Digests, Bankruptcy ☞2127.1.

§ 155. Temporary transfer of bankruptcy judges

(a) A bankruptcy judge may be transferred to serve temporarily as a bankruptcy judge in any judicial district other than the judicial district for which such bankruptcy judge was appointed upon the approval of the judicial council of each of the circuits involved.

(b) A bankruptcy judge who has retired may, upon consent, be recalled to serve as a bankruptcy judge in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a bankruptcy judge may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference of the United States, subject to the restrictions on the payment of an annuity in section 377 of this title or in subchapter III of chapter 83, and chapter 84, of title 5 which are applicable to such judge.

Added Pub.L. 98-353, Title I, § 104(a), July 10, 1984, 98 Stat. 339, and amended Pub.L. 99-651, Title II, § 202(a), Nov. 14, 1986, 100 Stat. 3648; Pub.L. 100-659, § 4(a), Nov. 15, 1988, 102 Stat. 3918.

Historical and Revision Notes

Effective Date of 1988 Amendment. Section 9 of Pub.L. 100-659 provided that the amendments by Pub.L. 100-659 shall take effect on Nov. 15, 1988, and shall apply to bankruptcy judges and magistrates who retire on or after Nov. 15, 1988, with special election provisions for bankruptcy judges, etc., who left office on or after July 31, 1987, and before Nov. 15, 1988.

Effective Date of 1986 Amendment. Section 203 of Pub.L. 99-651 provided that

amendment of subsec. (b) by Pub.L. 99-651 is effective Jan. 1, 1987.

Effective Date. For effective date of amendments by Title I of Pub.L. 98-353, see section 122 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 346, set out as an Effective Date of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy § 7.
West's Key No. Digests, Bankruptcy ☞2123.

§ 156. Staff; expenses

(a) Each bankruptcy judge may appoint a secretary, a law clerk, and such additional assistants as the Director of the Administrative Office of the United States Courts determines to be necessary. A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

(b) Upon certification to the judicial council of the circuit involved and to the Director of the Administrative Office of the United States Courts that the number of cases and proceedings pending within the jurisdiction under section 1334 of this title within a judicial district so warrants, the bankruptcy judges for such district may appoint an individual to serve as clerk of such bankruptcy court. The clerk may appoint, with the approval of such bankruptcy judges, and in such number as may be approved by the Director, necessary deputies, and may remove such deputies with the approval of such bankruptcy judges.

(c) Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

(d) No office of the bankruptcy clerk of court may be consolidated with the district clerk of court office without the prior approval of the Judicial Conference and the Congress.

(e) In a judicial district where a bankruptcy clerk has been appointed pursuant to subsection (b), the bankruptcy clerk shall be the official custodian of the records and dockets of the bankruptcy court.

(f) For purposes of financial accountability in a district where a bankruptcy clerk has been certified, such clerk shall be accountable for and pay into the Treasury all fees, costs, and other monies collected by such clerk except uncollected fees not required by an Act of Congress to be prepaid. Such clerk shall make returns thereof to the Director of the Administrative Office of the United States Courts and the Director of the Executive Office For United States Trustees, under regulations prescribed by such Directors.

Added Pub.L. 98-353, Title I, § 104(a), July 10, 1984, 98 Stat. 339, and amended Pub.L. 99-554, Title I, §§ 103, 142, 144(a), Oct. 27, 1986, 100 Stat. 3090, 3096; Pub.L. 100-702, Title X, § 1003(a)(3), Nov. 19, 1988, 102 Stat. 4665.

Historical and Revision Notes

Effective Date of 1986 Amendment. Amendment of subsec. (d) by Pub.L. 99-554 effective on Oct. 27, 1986, see section 302(b) of Pub.L. 99-554, set out as a note under section 581 of this title.

Amendment of subsecs. (e) and (f) by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section

302(a) of Pub.L. 99-554, set out as a note under section 581 of this title.

Effective Date. For effective date of amendments by Title I of Pub.L. 98-353, see section 122 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 346, set out as an Effective Date of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy § 7.

West's Key No. Digests, Bankruptcy ☞2122.

§ 157. Procedures

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to—

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; and

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A

determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

Added Pub.L. 98-353, Title I, § 104(a), July 10, 1984, 98 Stat. 340, and amended Pub.L. 99-554, Title I, §§ 143, 144(b), Oct. 27, 1986, 100 Stat. 3096; Pub.L. 103-394, Title I, § 112, October 22, 1994, 108 Stat. 4117.

Historical and Revision Notes

1994 Act. The amendment adds subsection (e), clarifying that bankruptcy judges may conduct jury trials and enter appropriate orders consistent with those trials if designated by the district court and with the express consent of all parties to the bankruptcy proceeding.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Effective Date of 1986 Amendment. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of this title.

Effective Date. For effective date of amendments by Title I of Pub.L. 98-353, see section 122 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 346, set out as an Effective Date of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy §§ 5 et seq., 9, 13, 471.

West's Key No. Digests, Bankruptcy Ⓒ2041.1-2063, 2101-2105.

§ 158. Appeals

(a) The district courts of the United States shall have jurisdiction to hear appeals

(1) from final judgments, orders, and decrees;

(2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and

(3) with leave of the court, from other interlocutory orders and decrees:

of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

(b)(1) The judicial council of a circuit shall establish a bankruptcy appellate panel service composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that—

(A) there are insufficient judicial resources available in the circuit; or

(B) establishment of such service would result in undue delay or increased cost to parties in cases under title 11.

Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference of the United States a report containing the factual basis of such finding.

(2)(A) A judicial council may reconsider, at any time, the finding described in paragraph (1).

(B) On the request of a majority of the district judges in a circuit for which a bankruptcy appellate panel service is established under paragraph (1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(C) On its own motion, after the expiration of the 3-year period beginning on the date a bankruptcy appellate panel service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(D) If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.

(3) Bankruptcy judges appointed under paragraph (1) shall be appointed and may be reappointed under such paragraph.

(4) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the districts within the circuits for which such panel is established, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate panel service, except that a member of such service may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title.

(6) Appeals may not be heard under this subsection by a panel of the bankruptcy appellate panel service unless the district judges for the district in which the appeals occur, by majority vote, have authorized such service to hear and determine appeals originating in such district.

(c)(1) Subject to subsection (b), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless—

(A) the appellant elects at the time of filing the appeal; or

(B) any other party elects, not later than 30 days after service of notice of the appeal;

to have such appeal heard by the district court.

(2) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

Added Pub.L. 98-353, Title I, § 104(a), July 10, 1984, 98 Stat. 341, and amended Pub.L. 101-650, Title III, § 305, Dec. 1, 1990, 104 Stat. 5105; Pub.L. 103-394, Title I, §§ 102, 104(c), (d), October 22, 1994, 108 Stat. 4108-4110.

Historical and Revision Notes

Effective Date. For effective date of amendments by Title I of Pub.L. 98-353, see section 122 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 346, set out as an Effective Date of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.

1994 Act. The amendment adds subsection (a)(2) so as to provide for an immediate appeal as of right to the district court from a bankruptcy court's order extending or reducing that debtor's exclusive period in which to file a plan. Subsection (b) provides for the establishment in each judicial circuit of a bankruptcy appellate panels, composed of sitting bankruptcy judges, to serve in place of the district court in reviewing bankruptcy court decisions.

Under this subsection, the judicial council of each circuit would be required to establish a bankruptcy appellate panel service for this purpose, unless the council finds there are insufficient judicial resources available in the circuit or that establishment would result in undue delay or increased cost to the parties. Subsection (c) provides that all appeals from bankruptcy courts shall be heard by a bankruptcy appellate panel, if established and in operation as provided section 158(b), unless a party makes a timely election to have an appeal heard by a district court.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective

Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

Library References:

C.J.S. Bankruptcy §§ 454 et seq.

West's Key No. Digests, Bankruptcy ⇨3761-3768, 3772, 3811.

CHAPTER 17—RESIGNATION AND RETIREMENT OF JUSTICES AND JUDGES

§ 372. Retirement for disability; substitute judge on failure to retire; judicial discipline

(a) Any justice or judge of the United States appointed to hold office during good behavior who becomes permanently disabled from performing his duties may retire from regular active service, and the President shall, by and with the advice and consent of the Senate, appoint a successor.

Any justice or judge of the United States desiring to retire under this section shall certify to the President his disability in writing.

Whenever an associate justice of the Supreme Court, a chief judge of a circuit or the chief judge of the Court of International Trade, desires to retire under this section, he shall furnish to the President a certificate of disability signed by the Chief Justice of the United States.

A circuit or district judge, desiring to retire under this section, shall furnish to the President a certificate of disability signed by the chief judge of his circuit.

A judge of the Court of International Trade desiring to retire under this section, shall furnish to the President a certificate of disability signed by the chief judge of his court.

Each justice or judge retiring under this section after serving ten years continuously or otherwise shall, during the remainder of his lifetime, receive the salary of the office. A justice or judge retiring under this section who has served less than ten years in all shall, during the remainder of his lifetime, receive one-half the salary of the office.

(b) Whenever any judge of the United States appointed to hold office during good behavior who is eligible to retire under this section does not do so and a certificate of his disability signed by a majority of the members of the Judicial Council of his circuit in the case of a circuit or district judge, or by the Chief Justice of the United States in the case of the Chief Judge of the Court of International Trade, or by the chief judge of his court in the case of a judge of the Court of International Trade, is presented to the President and the President finds that such judge is unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability and that the appointment of an additional judge is necessary for the efficient dispatch of business, the President may make such appointment by and with the advice and consent of the Senate. Whenever any such additional judge is appointed, the vacancy subsequently caused by the death, resignation, or retirement of the disabled judge shall not be filled. Any judge whose disability causes the appointment of an additional judge shall, for purpose of precedence, service ¹ as chief judge, or temporary performance

of the duties of that office, be treated as junior in commission to the other judges of the circuit, district, or court.

(c)(1) Any person alleging that a circuit, district, or bankruptcy judge, or a magistrate, has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct. In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint.

(2) Upon receipt of a complaint filed under paragraph (1) of this subsection, the clerk shall promptly transmit such complaint to the chief judge of the circuit, or, if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this subsection only, included in the term “chief judge”). The clerk shall simultaneously transmit a copy of the complaint to the judge or magistrate whose conduct is the subject of the complaint.

(3) After expeditiously reviewing a complaint, the chief judge, by written order stating his reasons, may—

(A) dismiss the complaint, if he finds it to be (i) not in conformity with paragraph (1) of this subsection, (ii) directly related to the merits of a decision or procedural ruling, or (iii) frivolous; or

(B) conclude the proceeding if he finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events.

The chief judge shall transmit copies of his written order to the complainant and to the judge or magistrate whose conduct is the subject of the complaint.

(4) If the chief judge does not enter an order under paragraph (3) of this subsection, such judge shall promptly—

(A) appoint himself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the facts and allegations contained in the complaint;

(B) certify the complaint and any other documents pertaining thereto to each member of such committee; and

(C) provide written notice to the complainant and the judge or magistrate whose conduct is the subject of the complaint of the action taken under this paragraph.

A judge appointed to a special committee under this paragraph may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit after his or her term as chief judge terminates under subsection (a)(3) or (c) of section 45 of this title. If a judge appointed to a committee under this paragraph dies, or retires from office under section 371(a) of this title, while serving on the committee, the chief judge of the circuit may appoint another circuit or district judge, as the case may be, to the committee.

(5) Each committee appointed under paragraph (4) of this subsection shall conduct an investigation as extensive as it considers necessary, and shall expeditiously file a comprehensive written report thereon with the judicial council of the circuit. Such report shall present both the findings of the investigation and the committee's recommendations for necessary and appropriate action by the judicial council of the circuit.

(6) Upon receipt of a report filed under paragraph (5) of this subsection, the judicial council—

(A) may conduct any additional investigation which it considers to be necessary;

(B) shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit, including, but not limited to, any of the following actions:

(i) directing the chief judge of the district of the magistrate whose conduct is the subject of the complaint to take such action as the judicial council considers appropriate;

(ii) certifying disability of a judge appointed to hold office during good behavior whose conduct is the subject of the complaint, pursuant to the procedures and standards provided under subsection (b) of this section;

(iii) requesting that any such judge appointed to hold office during good behavior voluntarily retire, with the provision that the length of service requirements under section 371 of this title shall not apply;

(iv) ordering that, on a temporary basis for a time certain, no further cases be assigned to any judge or magistrate whose conduct is the subject of a complaint;

(v) censuring or reprimanding such judge or magistrate by means of private communication;

(vi) censuring or reprimanding such judge or magistrate by means of public announcement; or

(vii) ordering such other action as it considers appropriate under the circumstances, except that (I) in no circumstances may the council order removal from office of any judge appointed to hold office during good behavior, and (II) any removal of a magistrate shall be in accordance with section 631 of this title and any removal of a bankruptcy judge shall be in accordance with section 152 of this title;

(C) may dismiss the complaint; and

(D) shall immediately provide written notice to the complainant and to such judge or magistrate of the action taken under this paragraph.

(7)(A) In addition to the authority granted under paragraph (6) of this subsection, the judicial council may, in its discretion, refer any complaint under this subsection, together with the record of any associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States.

(B) In any case in which the judicial council determines, on the basis of a complaint and an investigation under this subsection, or on the basis of informa-

tion otherwise available to the council, that a judge appointed to hold office during good behavior may have engaged in conduct—

- (i) which might constitute one or more grounds for impeachment under article II of the Constitution; or
- (ii) which, in the interest of justice, is not amenable to resolution by the judicial council,

the judicial council shall promptly certify such determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States.

(C) A judicial council acting under authority of this paragraph shall, unless contrary to the interests of justice, immediately submit written notice to the complainant and to the judge or magistrate whose conduct is the subject of the action taken under this paragraph.

(8)(A) Upon referral or certification of any matter under paragraph (7) of this subsection, the Judicial Conference, after consideration of the prior proceedings and such additional investigation as it considers appropriate, shall by majority vote take such action, as described in paragraph (6)(B) of this subsection, as it considers appropriate. If the Judicial Conference concurs in the determination of the council, or makes its own determination, that consideration of impeachment may be warranted, it shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary. Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.

(B) If a judge or magistrate has been convicted of a felony and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the Judicial Conference may, by majority vote and without referral or certification under paragraph (7), transmit to the House of Representatives a determination that consideration of impeachment may be warranted, together with appropriate court records, for whatever action the House of Representatives considers to be necessary.

(9)(A) In conducting any investigation under this subsection, the judicial council, or a special committee appointed under paragraph (4) of this subsection, shall have full subpoena powers as provided in section 332(d) of this title.

(B) In conducting any investigation under this subsection, the Judicial Conference, or a standing committee appointed by the Chief Justice under section 331 of this title, shall have full subpoena powers as provided in that section.

(10) A complainant, judge, or magistrate aggrieved by a final order of the chief judge under paragraph (3) of this subsection may petition the judicial council for review thereof. A complainant, judge, or magistrate aggrieved by an action of the judicial council under paragraph (6) of this subsection may petition the Judicial Conference of the United States for review thereof. The Judicial Conference, or the standing committee established under section 331 of this title, may grant a petition filed by a complainant, judge, or magistrate under this paragraph. Except as expressly provided in this paragraph, all orders and determinations,

including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

(11) Each judicial council and the Judicial Conference may prescribe such rules for the conduct of proceedings under this subsection, including the processing of petitions for review, as each considers to be appropriate. Such rules shall contain provisions requiring that—

(A) adequate prior notice of any investigation be given in writing to the judge or magistrate whose conduct is the subject of the complaint;

(B) the judge or magistrate whose conduct is the subject of the complaint be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing; and

(C) the complainant be afforded an opportunity to appear at proceedings conducted by the investigating panel, if the panel concludes that the complainant could offer substantial information.

Any such rule shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any rule promulgated under this subsection shall be a matter of public record, and any such rule promulgated by a judicial council may be modified by the Judicial Conference. No rule promulgated under this subsection may limit the period of time within which a person may file a complaint under this subsection.

(12) No judge or magistrate whose conduct is the subject of an investigation under this subsection shall serve upon a special committee appointed under paragraph (4) of this subsection, upon a judicial council, upon the Judicial Conference, or upon the standing committee established under section 331 of this title, until all related proceedings under this subsection have been finally terminated.

(13) No person shall be granted the right to intervene or to appear as *amicus curiae* in any proceeding before a judicial council or the Judicial Conference under this subsection.

(14) Except as provided in paragraph (8), all papers, documents, and records of proceedings related to investigations conducted under this subsection shall be confidential and shall not be disclosed by any person in any proceeding except to the extent that—

(A) the judicial council of the circuit in its discretion releases a copy of a report of a special investigative committee under paragraph (5) to the complainant whose complaint initiated the investigation by that special committee and to the judge or magistrate whose conduct is the subject of the complaint;

(B) the judicial council of the circuit, the Judicial Conference of the United States, or the Senate or the House of Representatives by resolution, releases any such material which is believed necessary to an impeachment investigation or trial of a judge under article I of the Constitution; or

(C) such disclosure is authorized in writing by the judge or magistrate who is the subject of the complaint and by the chief judge of the circuit, the

Chief Justice, or the chairman of the standing committee established under section 331 of this title.

(15) Each written order to implement any action under paragraph (6)(B) of this subsection, which is issued by a judicial council, the Judicial Conference, or the standing committee established under section 331 of this title, shall be made available to the public through the appropriate clerk's office of the court of appeals for the circuit. Unless contrary to the interests of justice, each such order issued under this paragraph shall be accompanied by written reasons therefor.

(16) Upon the request of a judge or magistrate whose conduct is the subject of a complaint under this subsection, the judicial council may, if the complaint has been finally dismissed under paragraph (6)(C), recommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the Federal judiciary, for those reasonable expenses, including attorneys' fees, incurred by that judge or magistrate during the investigation which would not have been incurred but for the requirements of this subsection.

(17) Except as expressly provided in this subsection, nothing in this subsection shall be construed to affect any other provision of this title, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, or the Federal Rules of Evidence.

(18) The United States Claims Court, the Court of International Trade, and the Court of Appeals for the Federal Circuit shall each prescribe rules, consistent with the foregoing provisions of this subsection, establishing procedures for the filing of complaints with respect to the conduct of any judge of such court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, each such court shall have the powers granted to a judicial council under this subsection.

June 25, 1948, c. 646, 62 Stat. 903; May 24, 1949, c. 139, § 67, 63 Stat. 99; Feb. 10, 1954, c. 6, § 4(a), 68 Stat. 13; Sept. 2, 1957, Pub.L. 85-261, 71 Stat. 586; Oct. 10, 1980, Pub.L. 96-417, Title V, § 501(9), 94 Stat. 1742; Oct. 15, 1980, Pub.L. 96-458, § 3(a), (b), 94 Stat. 2036, 2040; Apr. 2, 1982, Pub.L. 97-164, Title I, § 112, 96 Stat. 29; July 10, 1984, Pub.L. 98-353, Title I, § 107, 98 Stat. 342; Nov. 19, 1988, Pub.L. 100-702, Title IV, § 403(c), 102 Stat. 4651; Pub.L. 101-650, Title IV, §§ 402, 407, Dec. 1, 1990, 104 Stat. 5122, 5124; Oct. 29, 1992, Pub.L. 102-572, Title IX, § 902(b)(1), 106 Stat. 4516.

1. So in original.

Historical and Revision Notes

Effective Date of 1990 Amendment. Amendment by section 402 of Pub.L. 101-650 effective 90 days after Dec. 1, 1990, see section 407 of Pub.L. 101-650, set out as a note under section 332 of this title.

Effective Date of 1988 Amendment. Amendment by Pub.L. 100-702, effective Dec. 1, 1988, see section 407 of Pub.L. 100-702, set out as a note under section 2071 of this title.

Effective Date of 1984 Amendment. Amendment by Pub.L. 98-353 effective July

10, 1984, see section 122(a) of Pub.L. 98-353, set out as an Effective Date note under section 151 of this title.

Effective Date of 1982 Amendment. Amendment by Pub.L. 97-164 effective Oct. 1, 1982, see section 402 of Pub.L. 97-164, set out as a note under section 171 of this title.

National Commission on Judicial Impeachment. Sections 408 to 418 of Pub.L. 101-650 provided that:

“Sec. 408. Short title.

"This subtitle [subtitle II of title IV of Pub.L. 101-650, this note] may be cited as the 'National Commission on Judicial Discipline and Removal Act'.

"Sec. 409. Establishment.

"There is hereby established a commission to be known as the 'National Commission on Judicial Discipline and Removal' (hereinafter in this subtitle referred to as the 'Commission').

"Sec. 410. Duties of commission.

"The duties of the Commission are—

"(1) to investigate and study the problems and issues involved in the tenure (including discipline and removal) of an article III judge;

"(2) to evaluate the advisability of proposing alternatives to current arrangements with respect to such problems and issues, including alternatives for discipline or removal of judges that would require amendment to the Constitution; and

"(3) to prepare and submit to the Congress, the Chief Justice of the United States, and the President a report in accordance with section 415.

"Sec. 411. Membership.

"(a) Number and appointment.—The Commission shall be composed of 13 members as follows:

"(1) Three appointed by the President pro tempore of the Senate.

"(2) Three appointed by the Speaker of the House of Representatives.

"(3) Three appointed by the Chief Justice of the United States.

"(4) Three appointed by the President.

"(5) One appointed by the Conference of Chief Justices of the States of the United States.

"(b) Term.—Members of the Commission shall be appointed for the life of the Commission.

"(c) Quorum.—Six members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.

"(d) Chairman.—The members of the Commission shall select one of the members to be the Chairman.

"(e) Vacancy.—A vacancy on the Commission resulting from the death or resignation of a member shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

"(f) Continuation of membership.—If any member of the Commission who was appointed to the Commission as a Member of Congress or as an officer or employee of a government leaves that office, or if any member of the Commission who was appointed from persons who are not officers or employees of a government becomes an officer or employee of a government, the member may continue as a member of the Commission for not longer than the 90-day period beginning on the date the member leaves that office or becomes such an officer or employee, as the case may be.

"Sec. 412. Compensation of the commission.

"(a) Pay.—(1) Except as provided in paragraph (2), each member of the Commission who is not otherwise employed by the United States Government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code [section 5332 of Title 5, Government Organization and Employees], for each day (including travel time) during which he or she is engaged in the actual performance of duties as a member of the Commission.

"(2) A member of the Commission who is an officer or employee of the United States Government shall serve without additional compensation.

"(b) Travel.—All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

"Sec. 413. Director and staff of commission; experts and consultants.

"(a) Director.—The Commission shall, without regard to section 5311(b) of title 5, United States Code [section 5311(b) of Title 5], have a Director who shall be appointed by the Chairman and who shall be paid at a rate not to exceed the rate of

basic pay payable for level V of the Executive Schedule under section 5316 of such title [section 5316 of Title 5].

“(b) Staff.—The Chairman of the Commission may appoint and fix the pay of such additional personnel as the Chairman finds necessary to enable the Commission to carry out its duties. Such personnel may be appointed without regard to the provisions of title 5, United States Code [Title 5], governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title [section 5101 et seq. and section 5331 et seq. of Title 5] relating to classification and General Schedule pay rates, except that the annual rate of pay for any individual so appointed may not exceed a rate equal to the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of such title [section 5332 of Title 5].

“(c) Experts and Consultants.—The Commission may procure temporary and intermittent services of experts and consultants under section 3109(b) of title 5, United States Code [section 3109(b) of Title 5].

“Sec. 414. Powers of Commission.

“(a) Hearings and sessions.—The Commission or, on authorization of the Commission, a member of the Commission may, for the purpose of carrying out this subtitle, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

“(b) Obtaining official data.—The Commission may secure directly from any department, agency, or entity within the executive or judicial branch of the Federal Government information necessary to enable it to carry out this subtitle. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

“(c) Facilities and support services.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request.

Upon request of the Commission, the head of any Federal agency is authorized to make any of the facilities and services of such agency available to the Commission to assist the Commission in carrying out its duties under this subtitle.

“(d) Expenditures and contracts.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or member considers appropriate for the purposes of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in appropriation Acts.

“(e) Mails.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

“(f) Gifts.—The Commission may accept, use, and dispose of gifts or donations of services or property.

“Sec. 415. Report.

“The Commission shall submit to each House of Congress, the Chief Justice of the United States, and the President a report not later than one year after the date of its first meeting. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislative or administrative action as it considers appropriate.

“Sec. 416. Termination.

“The Commission shall cease to exist on the date 30 days after the date it submits its report to the President and the Congress under section 415.

“Sec. 417. Authorization of appropriations.

“There is authorized to be appropriated the sum of \$750,000 to carry out the provisions of this subtitle.

“Sec. 418. Effective date.

“This subtitle shall take effect on the date of the enactment of this Act [Dec. 1, 1990].”

Extension of Deadline. Pub.L. 102-368 provided that:

Notwithstanding the requirement of section 415 of Public Law 101-650 to submit the report mandated by said section not later than one year after the date of the Commission's first meeting, the National Commis-

sion on Judicial Discipline and Removal shall submit to each House of Congress, the Chief Justice of the United States, and the President, the report mandated in said section no later than August 1, 1993.

Library References:

C.J.S. Bankruptcy § 7; Judges §§ 161 et seq.

West's Key No. Digests, Bankruptcy ☞2123; Judges ☞13 et seq.

CHAPTER 21—GENERAL PROVISIONS APPLICABLE TO COURTS AND JUDGES

§ 455. Disqualification of justice, judge, or magistrate

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as a lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) “proceeding” includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) “fiduciary” includes such relationships as executor, administrator, trustee, and guardian;

(4) “financial interest” means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a “financial interest” in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a “financial interest” in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a “financial interest” in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a “financial interest” in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

June 25, 1948, c. 646, 62 Stat. 908; Dec. 5, 1974, Pub.L. 93-512, § 1, 88 Stat. 1609; Nov. 6, 1978, Pub.L. 95-598, Title II, § 214(a), (b), 92 Stat. 2661; Pub.L. 100-702, Title X, § 1007, Nov. 19, 1988, 102 Stat. 4667.

Library References:

C.J.S. Bankruptcy § 7; Judges §§ 62 et seq., 119 et seq.
West's Key No. Digests, Bankruptcy Ⓒ2123; Judges Ⓒ39-56.

PART II—DEPARTMENT OF JUSTICE

CHAPTER 39—UNITED STATES TRUSTEES

Sec.

- 581. United States trustees.
- 582. Assistant United States trustees.
- 583. Oath of office.
- 584. Official stations.
- 585. Vacancies.
- 586. Duties; supervision by Attorney General.
- 587. Salaries.
- 588. Expenses.
- 589. Staff and other employees.
- 589a. United States Trustee System Fund.

United States Trustee Pilot; Repeal of Bankruptcy Provisions Relating to United States Trustees.

Pub.L. 95-598, Title IV, § 408, Nov. 6, 1978, 92 Stat. 2687, as amended Pub.L. 98-166, Title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub.L. 98-353, Title III, § 323, July 10, 1984, 98 Stat. 358; Pub.L. 99-429, Sept. 30, 1986, 100 Stat. 985; Pub.L. 99-554, Title III, § 307(a), Oct. 27, 1986, 100 Stat. 3125, which provided that the Attorney General conduct such studies and surveys as necessary to evaluate the needs, feasibility, and effectiveness of the United States trustee system, and report the result of such studies and surveys to the Congress, the President, and the Judicial Conference of the United States, beginning on or before January 3, 1980, and annually thereafter during the transition period; that not later than January 3, 1984, the Attorney General report to the Congress, to the President, and the Judicial Conference of the United States, as to the feasibility, projected annual cost and effectiveness of the United States trustee system, as determined on the basis of the studies and surveys respecting the operation of the United States trustee system in the districts, together with recommendations as to the desirability and method of proceeding with implementation of the United States trustee system in all judicial districts of the United States; and that chapter 15 of title 11 of the United States Code [section 1501 et seq. of Title 11, Bankruptcy] and chapter 39 of title 28 of the United States Code [this chap-

ter] are repealed, and all references to the United States trustee contained in title 28 of the United States Code [this title] are deleted, as of 30 days after the effective date of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 [see section 302 of Pub.L. 99-554, set out as a note under section 581 of this title], with service of any United States trustee, of any assistant United States trustee, and of any employee employed or appointed under the authority of such chapter 39 is terminated on such date, was repealed by Pub.L. 99-554, Title III, § 307(b), Oct. 27, 1986, 100 Stat. 3125.

[For effective date of repeal, see section 302 of Pub.L. 99-554, set out as a note under section 581 of Title 28.]

Pub.L. 99-500, Title I, § 101(b) [Title II, § 200], Oct. 18, 1986, 100 Stat. 1783-45, and Pub.L. 99-591, Title I, § 101(b) [Title II, § 200], Oct. 30, 1986, 100 Stat. 3341-45, provided that, effective immediately before November 10, 1986, section 408(c) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2687), is amended by striking out “November 10, 1986” and inserting in lieu thereof “September 30, 1987”. Such amendment was incapable of execution in view of the prior Amendment of such section 408(c) by section 307(a) of Pub.L. 99-554, effective Oct. 27, 1986, pursuant to section 302(b) of Pub.L. 99-554, and in view of the repeal of section 408(c) by section 307(b) of Pub.L. 99-554.

§ 581. United States trustees

(a) The Attorney General shall appoint one United States trustee for each of the following regions composed of Federal judicial districts (without regard to section 451):

- (1) The judicial districts established for the States of Maine, Massachusetts, New Hampshire, and Rhode Island.
- (2) The judicial districts established for the States of Connecticut, New York, and Vermont.
- (3) The judicial districts established for the States of Delaware, New Jersey, and Pennsylvania.
- (4) The judicial districts established for the States of Maryland, North Carolina, South Carolina, Virginia, and West Virginia and for the District of Columbia.
- (5) The judicial districts established for the States of Louisiana and Mississippi.
- (6) The Northern District of Texas and the Eastern District of Texas.
- (7) The Southern District of Texas and the Western District of Texas.
- (8) The judicial districts established for the States of Kentucky and Tennessee.
- (9) The judicial districts established for the States of Michigan and Ohio.
- (10) The Central District of Illinois and the Southern District of Illinois; and the judicial districts established for the State of Indiana.
- (11) The Northern District of Illinois; and the judicial districts established for the State of Wisconsin.
- (12) The judicial districts established for the States of Minnesota, Iowa, North Dakota, and South Dakota.
- (13) The judicial districts established for the States of Arkansas, Nebraska, and Missouri.
- (14) The District of Arizona.
- (15) The Southern District of California; and the judicial districts established for the State of Hawaii, and for Guam and the Commonwealth of the Northern Mariana Islands.
- (16) The Central District of California.
- (17) The Eastern District of California and the Northern District of California; and the judicial district established for the State of Nevada.
- (18) The judicial districts established for the States of Alaska, Idaho (exclusive of Yellowstone National Park), Montana (exclusive of Yellowstone National Park), Oregon, and Washington.
- (19) The judicial districts established for the States of Colorado, Utah, and Wyoming (including those portions of Yellowstone National Park situated in the States of Montana and Idaho).
- (20) The judicial districts established for the States of Kansas, New Mexico, and Oklahoma.
- (21) The judicial districts established for the States of Alabama, Florida, and Georgia and for the Commonwealth of Puerto Rico and the Virgin Islands of the United States.

(b) Each United States trustee shall be appointed for a term of five years. On the expiration of his term, a United States trustee shall continue to perform the duties of his office until his successor is appointed and qualifies.

(c) Each United States trustee is subject to removal by the Attorney General. Added Pub.L. 95-598, Title II, § 224(a), Nov. 6, 1978, 92 Stat. 2662, and amended Pub.L. 99-554, Title I, § 111(a)-(c), Oct. 27, 1986, 100 Stat. 3090, 3091.

Historical and Revision Notes

Short Title of 1986 Amendment. For short title of Pub.L. 99-554 as the “Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986”, see section 1 of Pub.L. 99-554, set out as a note preceding section 101 of Title 11, Bankruptcy.

Incumbent United States Trustee. Sections 301, 302(b), of Pub.L. 99-554 eff. Oct. 27, 1986, provided that:

“(a) Area for Which Appointed. Notwithstanding any paragraph of section 581(a) of title 28, United States Code, as in effect before the effective date of this Act [section 581(a) of Title 28, Judiciary and Judicial Procedure prior to amendment by Pub.L. 99-554], a United States trustee serving in such office on the effective date of this Act [see section 302 of Pub.L. 99-554, set out as a note under section 581 of Title 28] shall serve the remaining term of such office as United States trustee for the region specified in a paragraph of such section, as amended by this Act, that includes the site at which the primary official station of the United States trustee is located immediately before the effective date of this Act.

“(b) Term of Office. Notwithstanding section 581(b) of title 28, United States Code, as in effect before the effective date of this Act [section 581(b) of Title 28, prior to amendment by Pub.L. 99-554], the term of office of any United States trustee serving in such office on the date of the enactment of this Act [Oct. 27, 1986] shall expire—

“(1) 2 years after the expiration date of such term of office under such section, as so in effect, or

“(2) 4 years after the date of the enactment of this Act [Oct. 27, 1986], whichever occurs first.”

Effective Date of 1986 Amendments; Savings Provisions; References in Title 11 Section 326(b) to Title 11 Chapter 13 and Section 1302(a) and (d); References in Title 11 Section 1202(a) to United

States Trustee; Effective Date of 1986 Amendments for Certain Judicial Districts Not Served by U.S. Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees; Effective Date and Savings Provisions for Repeal of Title 11 Chapter 12. Section 302 of Pub.L. 99-554 as amended by Pub.L. 101-650, Title III, § 317(a), (c), Dec. 1, 1990, 104 Stat. 5115, 5116; Pub.L. 103-65, § 1, Aug. 6, 1993, 107 Stat. 311, provided that:

“(a) General Effective Date. Except as provided in subsections (b), (c), (d), (e), and (f), this Act and the amendments made by this Act [see Short Title of 1986 Amendment note set out preceding section 101 of Title 11, Bankruptcy] shall take effect 30 days after the date of the enactment of this Act [Oct. 27, 1986].

“(b) Amendments Relating to Bankruptcy Judges and Incumbent United States Trustees. Subtitle A of title I [amending sections 152 and 156 of Title 28, Judiciary and Judicial Procedure and provisions set out as a note under section 152 of Title 28], and sections 301 [set out as a note under section 581 of Title 28] and 307(a) [amending provisions set out as a note preceding section 581 of Title 28], shall take effect on the date of the enactment of this Act [Oct. 27, 1986].

“(c) Amendments Relating to Family Farmers. (1) The amendments made by subtitle B of title II [enacting sections 1201 to 1231 of Title 11, Bankruptcy, and amending sections 101, 103, 108, 109, 303, 321, 322, 327, 329, 330, 346, 347, 348, 362, 363,

364, 365, 502, 523, 524, 546, 557, 706, 726, 727, 728, 1106, 1112, 1306, and 1307 of Title 11] shall not apply with respect to cases commenced under title 11 of the United States Code [Title 11] before the effective date of this Act [this section].

“(2) Section 1202 of title 11 of the United States Code (as added by the amendment made by section 255 of this Act) [section 1202 of Title 11] shall take effect on the effective date of this Act [this section] and before the amendment made by section 227 of this Act [striking out sections 1202(c) and (d) of Title 11].

“(3) Until the amendments made by subtitle A of title II of this Act [enacting section 307 of Title 11, amending sections 101, 102, 105, 303, 321, 322, 324, 326, 327, 330, 341, 343, 345, 701, 703, 704, 705, 707, 727, 1102, 1104, 1105, 1112, 1129, 1163, 1202, 1302, 1307, and 1326 of Title 11, and repealing sections 1501 to 151326 of Title 11] become effective in a district and apply to a case, for purposes of such case—

“(A)(i) any reference in section 326(b) of title 11 of the United States Code [section 326(b) of Title 11] to chapter 13 of title 11 of the United States Code [section 1301 et seq. of Title 11] shall be deemed to be a reference to chapter 12 or chapter 13 of title 11 of the United States Code [section 1201 et seq. or 1301 et seq. of Title 11].

“(ii) any reference in such section 326(b) [section 326(b) of Title 11] to section 1302(d) of title 11 of the United States Code [section 1302(d) of Title 11] shall be deemed to be a reference to section 1302(d) of title 11 of the United States Code [section 1302(d) of Title 11] or section 586(b) of title 28 of the United States Code [section 586(b) of Title 28], and

“(iii) any reference in such section 326(b) [section 326(b) of Title 11] to section 1302(a) of title 11 of the United States Code [section 1302(a) of Title 11] shall be deemed to be a reference to section 1202(a) or section 1302(a) of title 11 of the United States Code [section 1202(a) or 1302(a) of Title 11], and

“(B)(i) the first two references in section 1202(a) of title 11 of the United States Code (as added by the amendment made by section 255 of this Act) [section 1202(a) of Title 11] to the United States

trustee shall be deemed to be a reference to the court, and

“(ii) any reference in such section 1202(a) [section 1202(a) of Title 11] to section 586(b) of title 28 of the United States Code [section 586(b) of Title 28] shall be deemed to be a reference to section 1202(c) of title 11 of the United States Code (as so added) [section 1202(c) of Title 11].

“(d) Application of Amendments to Judicial Districts.

“(1) Certain Regions Not Currently Served by United States Trustees. (A) The amendments made by subtitle A of title II of this Act [enacting section 307 of Title 11, amending sections 101, 102, 105, 303, 321, 322, 324, 326, 327, 330, 341, 343, 345, 701, 703, 704, 705, 707, 727, 1102, 1104, 1105, 1112, 1129, 1163, 1202, 1302, 1307, and 1326 of Title 11, and repealing sections 1501 to 151326 of Title 11], and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act) [section 1930(a)(6) of Title 28], shall not—

“(i) become effective in or with respect to a judicial district specified in subparagraph (B) until, or

“(ii) apply to cases while pending in such district before, the expiration of the 270-day period beginning on the effective date of this Act [this section] or of the 30-day period beginning on the date the Attorney General certifies under section 303 of this Act [set out as a note under section 581 of Title 28] the region specified in a paragraph of section 581(a) of Title 28, United States Code, as amended by section 111(a) of this Act [section 581(a) of Title 28], that includes such district, whichever occurs first.

“(B) Subparagraph (A) applies to the following:

“(i) The judicial district established for the Commonwealth of Puerto Rico.

“(ii) The District of Connecticut.

“(iii) The judicial districts established for the State of New York (other than the Southern District of New York).

“(iv) The District of Vermont.

“(v) The judicial districts established for the State of Pennsylvania.

“(vi) The judicial district established for the Virgin Islands of the United States.

“(vii) The District of Maryland.

“(viii) The judicial districts established for the State of North Carolina.

“(ix) The District of South Carolina.

“(x) The judicial districts established for the State of West Virginia.

“(xi) The Western District of Virginia.

“(xii) The Eastern District of Texas.

“(xiii) The judicial districts established for the State of Wisconsin.

“(xiv) The judicial districts established for the State of Iowa.

“(xv) The judicial districts established for the State of New Mexico.

“(xvi) The judicial districts established for the State of Oklahoma.

“(xvii) The District of Utah.

“(xviii) The District of Wyoming (including those portions of Yellowstone National Park situated in the States of Montana and Idaho).

“(xix) The judicial districts established for the State of Alabama.

“(xx) The judicial districts established for the State of Florida.

“(xxi) The judicial districts established for the State of Georgia.

“(2) Certain Remaining Judicial Districts Not Currently Served by United States Trustees. (A) The amendments made by subtitle A of title II of this Act [enacting section 307 of Title 11, amending sections 101, 102, 105, 303, 321, 322, 324, 326, 327, 330, 341, 343, 345, 701, 703, 704, 705, 707, 727, 1102, 1104, 1105, 1112, 1129, 1163, 1202, 1302, 1307, and 1326 of Title 11, and repealing sections 1501 to 151326 of Title 11], and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act) [section 1930(a)(6) of Title 28], shall not—

“(i) become effective in or with respect to a judicial district specified in subparagraph (B), until, or

“(ii) apply to cases while pending in such district before, the expiration of the 2-year period beginning on the effective date of this Act [this section] or of the

30-day period beginning on the date the Attorney General certifies under section 303 of this Act [set out as a note under section 581 of Title 28] the region specified in a paragraph of section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act [section 581(a) of Title 28], that includes such district, whichever occurs first.

“(B) Subparagraph (A) applies to the following:

“(i) The judicial districts established for the State of Louisiana.

“(ii) The judicial districts established for the State of Mississippi.

“(iii) The Southern District of Texas and the Western District of Texas.

“(iv) The judicial districts established for the State of Kentucky.

“(v) The judicial districts established for the State of Tennessee.

“(vi) The judicial districts established for the State of Michigan.

“(vii) The judicial districts established for the State of Ohio.

“(viii) The judicial districts established for the State of Illinois (other than the Northern District of Illinois).

“(ix) The judicial districts established for the State of Indiana.

“(x) The judicial districts established for the State of Arkansas.

“(xi) The judicial districts established for the State of Nebraska.

“(xii) The judicial districts established for the State of Missouri.

“(xiii) The District of Arizona.

“(xiv) The District of Hawaii.

“(xv) The judicial district established for Guam.

“(xvi) The judicial district established for the Commonwealth of the Northern Mariana Islands.

“(xvii) The judicial districts established for the State of California (other than the Central District of California).

“(xviii) The District of Nevada.

“(xix) The District of Alaska.

“(xx) The District of Idaho.

“(xxi) The District of Montana.

“(xxii) The District of Oregon.

“(xxiii) The judicial districts established for the State of Washington.

“(3) Judicial Districts for the States of Alabama and North Carolina. (A) Notwithstanding paragraphs (1) and (2), and any other provision of law, the amendments made by subtitle A of title II of this Act [enacting section 307 of Title 11, amending sections 101, 102, 105, 303, 321, 322, 324, 326, 327, 330, 341, 343, 345, 701, 703, 704, 705, 707, 727, 1102, 1104, 1105, 1112, 1129, 1163, 1202, 1302, 1307, and 1326 of Title 11, and repealing sections 1501 to 151326 of Title 11], and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act) [section 1930(a)(6) of Title 28], shall not—

“(i) become effective in or with respect to a judicial district specified in subparagraph (E) until, or

“(ii) apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, United States Code, as amended by section 111(a) of this Act [section 581(a) of Title 28], or October 1, 2002, whichever occurs first, except that the amendment to section 105(a) of title 11, United States Code, shall become effective as of the date of the enactment of the Federal Courts Study Committee Implementation Act of 1990.

“(B) Any election under subparagraph (A) shall be made upon a majority vote of the chief judge of such district and each bankruptcy judge in such judicial district in favor of such election.

“(C) Notice that an election has been made under subparagraph (A) shall be given, not later than 10 days after such election, to the Attorney General and the appropriate Federal Circuit Court of Appeals for such district.

“(D) Any election made under subparagraph (A) shall become effective on the date the amendments made by subtitle A of title II of this Act become effective in the region that includes such district or 30 days after the Attorney General receives the notice required under subparagraph (C), whichever occurs later.

“(E) Subparagraph (A) applies to the following:

“(i) The judicial districts established for the State of Alabama.

“(ii) The judicial districts established for the State of North Carolina.

“(F)(i) Subject to clause (ii), with respect to cases under chapters 7, 11, 12, and 13 of title 11, United States Code [sections 701 et seq., 1101 et seq., 1201 et seq., and 1301 et seq., respectively, of Title 11]—

“(I) commenced before the effective date of this Act [this section], and

“(II) pending in a judicial district in the State of Alabama or the State of North Carolina before any election made under subparagraph (A) by such district becomes effective or October 1, 2002, whichever occurs first,

the amendments made by section 113 [amending section 586 of Title 28] and subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not apply until October 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first.

“(ii) For purposes of clause (i), the amendments made by section 113 and subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not apply with respect to a case under chapter 7, 11, 12, or 13 of title 11, United States Code, if—

“(I) the trustee in the case files the final report and account of administration of the estate, required under section 704 of such title [section 704 of Title 11], or

“(II) a plan is confirmed under section 1129, 1225, or 1325 of such title [section 1129, 1225, or 1325 of Title 11, respectively],

before October 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first.

“(G) Notwithstanding section 589a of title 28, United States Code, as added by section 115 of this Act [section 589a of

Title 28], funds collected as a result of the amendments made by section 117 of this Act [amending section 1930 of Title 28], in a judicial district in the State of Alabama or the State of North Carolina under section 1930(a) of title 28, United States Code, before the date the amendments made by subtitle A of title II of this Act take effect in such district shall be deposited in the general receipts of the Treasury.

“(H) The repeal made by section 231 of this Act [repealing section 1501 et seq. of Title 11] shall not apply in or with respect to the Northern District of Alabama until March 1, 1987, or the effective date of any election made under subparagraph (A) by such district, whichever occurs first.

“(I) In any judicial district in the State of Alabama or the State of North Carolina that has not made the election described in subparagraph (A), any person who is appointed under regulations issued by the Judicial Conference of the United States to administer estates in cases under title 11 of the United States Code may—

“(i) establish, maintain, and supervise a panel of private trustees that are eligible and available to serve as trustees in cases under title 11, United States Code, and

“(ii) supervise the administration of cases and trustees in cases under chapters 7, 11, 12, and 13 of title 11, United States Code,

until the amendments made by subtitle A of title II take effect in such district.

“(e) Application of United States Trustee System and Quarterly Fees to Certain Cases.

“(1) In general. Subject to paragraph (2), with respect to cases under chapters 7, 11, 12, and 13 of title 11, United States Code [sections 701 et seq., 1101 et seq., 1201 et seq., and 1301 et seq., respectively, of Title 11]—

“(A) commenced before the effective date of this Act [this section], and

“(B) pending in a judicial district referred to in section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act [section 581(a) of Title 11], for which a United States trustee is not authorized before the effective date of this Act [this section] to be appointed,

the amendments made by section 113 [amending section 586 of Title 28] and subtitle A of title II of this Act [enacting section 307 of Title 11, amending sections 101, 102, 105, 303, 321, 322, 324, 326, 327, 330, 341, 343, 345, 701, 703, 704, 705, 707, 727, 1102, 1104, 1105, 1112, 1129, 1163, 1202, 1302, 1307, and 1326 of Title 11, and repealing sections 1501 to 151326 of Title 11], and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act) [section 1930(a)(6) of Title 28], shall not apply until the expiration of the 3-year period beginning on the effective date of this Act [this section] or of the 1-year period beginning on the date the Attorney General certifies under section 303 of this Act [set out as a note under section 581 of Title 28], the region specified in a paragraph of such section 581(a), as so amended, that includes such district, whichever occurs first.

“(2) Amendments inapplicable. For purposes of paragraph (1), the amendments made by section 113 and subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not apply with respect to a case under chapter 7, 11, 12, or 13 of title 11, United States Code, if—

“(A) the trustee in the case files the final report and account of administration of the estate, required under section 704 of such title [section 704 of Title 11], or

“(B) a plan is confirmed under section 1129, 1225, or 1325 of such title [section 1129, 1225, or 1325 of Title 11, respectively],

before the expiration of the 3-year period, or the expiration of the 1-year period, specified in paragraph (1), whichever occurs first.

“(3) Rule of Construction Regarding Fees for Cases. This Act [see Short Title of 1986 Amendment note set out preceding 101 of Title 11] and the amendments made by section 117(4) of this Act [amending section 1930(a)(5), (6) of Title 28] shall not be construed to require the payment of a fee under paragraph (6) of section 1930(a) of Title 28, United States Code, in a case under Title 11 of the United States Code for any conduct or period occurring before

such paragraph becomes effective in the district in which such case is pending.

“(f) Repeal of Chapter 12 of Title 11. Chapter 12 of title 11 of the United States Code [section 1201 et seq. of Title 11] is repealed on October 1, 1998. All cases commenced or pending under chapter 12 of title 11, United States Code, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter had not been repealed. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed.”

Participation by Bankruptcy Administrator at Meetings of Creditors and Equity Security Holders. Section 105 of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided:

“(a) Presiding Officer.—A bankruptcy administrator appointed under section 302(d)(3)(I) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note; Public Law 99-554; 100 Stat. 3123), as amended by section 317(a) of the Federal Courts Study Committee Implementation Act of 1990 (Public Law 101-650; 104 Stat. 5115), or the bankruptcy administrator’s designee may preside at the meeting of creditors convened under section 341(a) of title 11, United States Code. The bankruptcy administrator or the bankruptcy administrator’s designee may preside at any meeting of equity security holders convened under section 341(b) of title 11, United States Code.

“(b) Examination of the Debtor.—The bankruptcy administrator or the bankruptcy administrator’s designee may examine the debtor at the meeting of creditors and may administer the oath required under section 343 of title 11, United States Code.”

Certification of Judicial Districts; Notice and Publication of Certification. Section 303 of Pub.L. 99-554 provided that:

“(a) Certification by Attorney General. The Attorney General may certify in writing a region specified in a paragraph of section 581(a) of title 28, United States Code (other than paragraph (16)), as amended by section 111(a) of this Act [section 581(a) of Title 28, Judiciary and Judicial Procedure], to the appropriate court of appeals of the United

States, for the purpose of informing such court that certain amendments made by this Act [Pub.L. 99-554] will become effective in accordance with section 302 of this Act [set out as a note under section 581 of Title 28].

“(b) Notice and Publication of Certification. Whenever the Attorney General transmits a certification under subsection (a), the Attorney General shall simultaneously—

“(1) transmit a copy of such certification to the Speaker of the House of Representatives and to the President pro tempore of the Senate, and

“(2) publish such certification in the Federal Register.”

Administrative Provisions. Section 304 of Pub.L. 99-554 provided that:

“(a) Cooperative Arrangements. The Attorney General and the Director of the Administrative Office of the United States Courts may enter into agreements under which United States trustees may—

“(1) use—

“(A) the services, equipment, personnel, records, reports, and data compilations, in any form, of the courts of the United States, and

“(B) the facilities of such courts, and

“(2) cooperate in the use by the courts of the United States of—

“(A) the services, equipment, personnel, records, reports, and data compilations, in any form, of United States trustees, and

“(B) the facilities of such trustees,

to prevent duplication during the 2-year period beginning on the effective date of this Act [see section 302 of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure].

“(b) Information and Documents Relating to Bankruptcy Cases and United States Trustees. The Director of the Administrative Office of the United States Courts shall make available to United States trustees, at the request of the Attorney General and on a continuing basis, all records, reports, and data compilations relating to—

“(1) cases and proceedings under title 11 of the United States Code [Title 11, Bankruptcy], and

“(2) the duties of United States trustees under titles 11 and 28 of the United States Code [Titles 11 and 28].”

Application of Certain Bankruptcy Rules. Section 305 of Pub.L. 99-554 provided that:

“(a) Rules Relating to the United States Trustee System. If a United States trustee is not authorized, before the effective date of this Act [see section 302 of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure], to be appointed for a judicial district referred to in section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act [section 581(a) of Title 28], then part X of the Bankruptcy Rules [set out in Title 11, Bankruptcy] shall not apply to cases in such district until the amendments made by subtitle A of title II of this Act [Pub.L. 99-554, Title II, §§ 201 to 231] become effective under section 302 of this Act in such district.

“(b) Rules Relating to Chapter 12 of Title 11. The rules prescribed under section 2075 of title 28, United States Code [section 2075 of Title 28], and in effect on the date of the enactment of this Act [Oct. 27, 1986] shall apply to cases filed under chapter 12 of title 11, United States Code [this chapter], to the extent practicable and not inconsistent with the amendments made by title II of this Act [Pub.L. 99-554, Title II, §§ 201 to 233].”

Salary of Incumbent United States Trustee. Section 306 of Pub.L. 99-554 provided that:

“For service as a United States trustee in the period beginning on the effective date of this Act [see section 302 of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure] and ending on the expiration under section 301 of this Act [set out as a note under section 581 of Title 28] of their respective terms of office, the salary payable to United States trustees serving in such offices on the effective date of this Act shall be fixed in accordance with section 587 of title 28, United States Code, as amended by section 114(a) of this Act [section 587 of Title 28].”

Preservation of United States Trustee System During Pendency of Legislation Repealer. Section 307 of Pub.L. 99-554 provided that:

“(a) Temporary Delay of Repeal of United States Trustee System. Effective immedi-

ately before November 10, 1986, section 408(c) of the Act of November 6, 1978 (Pub.L. 95-598; 92 Stat. 2687) [formerly set out as a note preceding section 581 of Title 28, Judiciary and Judicial Procedure], is amended by striking out ‘November 10, 1986’ and inserting in lieu thereof ‘30 days after the effective date of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986’.

“(b) Conforming Amendment. Section 408 of the Act of November 6, 1978 (Pub.L. 95-598; 92 Stat. 2687) [formerly set out as a note preceding section 581 of Title 28, Judiciary and Judicial Procedure], is repealed.”

[Section 302(b) of Pub.L. 99-554 provided in part that the amendment by subsec. (a) is effective Oct. 27, 1986.]

Consideration of Current Private Trustees for Appointment by United States Trustees. Section 308 of Pub.L. 99-554 provided that:

“(a) Trustees in Bankruptcy Cases Under Chapter 7. It is the sense of the Congress that individuals who are serving before the effective date of this Act [see section 302 of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure], as trustees in cases under chapter 7 of title 11, United States Code [section 701 et seq. of Title 11, Bankruptcy], should be considered by United States trustees for appointment under section 586(a)(1) of title 28, United States Code [section 586(a)(1) of Title 28], to the panels of private trustees that are established as a result of the amendments made by this Act [see Short Title of 1986 Amendment note preceding section 101 of Title 11].

“(b) Standing Trustees in Bankruptcy Cases Under Chapter 13. It is the sense of the Congress that individuals who are serving before the effective date of this Act [see section 302 of Pub.L. 99-554, set out as a note under section 581 of Title 28], as standing trustees in cases under chapter 13 of title 11, United States Code [section 1301 et seq. of Title 11], should be considered by the United States trustees for appointment under section 586(b) of title 28, United States Code [section 586(b) of Title 28], as standing trustees who are appointed as a result of the amendments made by this Act [see note preceding section 101 of Title 11].”

Appointment of United States Trustees by Attorney General. Section 309 of Pub.L. 99-554 provided that:

"It is the sense of the Congress that individuals otherwise qualified who are serving, before the effective date of this Act [see section 302 of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure], as estate administrators under title 11 of the United States Code [Title 11, Bankruptcy] should be considered by the Attorney General for appointment under sections 581 and 582 of title 28, United States Code [sections 581 and 582 of Title 28], to new positions of United States trustee and assistant United States trustee resulting from the amendments made by this Act [see Short Title of 1986 Amendment note set out preceding section 101 of Title 11]."

Electronic Case Management Demonstration Project. Section 310 of Pub.L. 99-554 provided that:

"(a) Establishment of Project. Not later than 1 year after the effective date of this Act [see section 302 of Pub.L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure], the Director of the Executive Office for United States Trustees, in consultation with the Director of the Administrative Office of the United States Courts, shall establish an electronic case management demonstration project to be carried out in 3 Federal judicial districts that have a sufficiently large and varied bankruptcy caseload so as to provide a meaningful evaluation of the cost and effectiveness of such system. A contract for such project shall be awarded—

"(1) on the basis of competitive bids submitted by qualified nongovernmental entities that are able to design an automated joint information system for use by the United States courts and by United States trustees, and

"(2) in accordance with the Federal Property and Administrative Services Act of 1949, the Office of Federal Procurement Policy Act, and title 31 of the United States Code [Act June 30, 1949, ch. 288, 63 Stat. 377, Pub.L. 93-400, Aug. 30, 1974, 88 Stat. 796, and Title 31, Money and Finance, respectively].

"(b) Study by General Accounting Office. Not later than 1 year after the electronic case management system begins to operate

in all of the judicial districts participating in the demonstration project carried out under subsection (a), the General Accounting Office shall conduct a study to compare the cost and effectiveness of such system with the cost and effectiveness of case management systems used in Federal judicial districts that are not participating in such project.

"(c) Term of Project. The demonstration project required by subsection (a) shall be carried out until—

"(1) the expiration of the 2-year period beginning on the date the electronic case management system begins to operate in all of the judicial districts participating in such project, or

"(2) legislation is enacted to extend, expand, modify, or terminate the operation of such project,

whichever occurs first.

"(d) Use by Clerks of the Courts. The electronic case management system demonstrated under the project required by subsection (a) shall provide the clerk of court in each district in which such system is operated, with a means of—

"(1) maintaining a complete electronic case file of all relevant information contained in petitions and schedules (and any amendments thereto) relating to debtors in cases under title 11 of the United States Code [Title 11, Bankruptcy], including—

"(A) a complete list of creditors in each such case, as listed by the debtor,

"(B) a complete list of assets scheduled by the debtor, the value of such asset, and any action taken by the trustee or debtor in possession with regard to such asset during the pendency of such case,

"(C) a complete list of debts and, with respect to each debt—

"(i) any priority of such debt under title 11 of the United States Code,

"(ii) whether such debt is secured or unsecured, and

"(iii) whether such debt is contingent or noncontingent, and

"(D) the debtor's statements of current expenses and income, and

"(2) maintaining all calendars and dockets and producing all notices required to

be sent in cases under title 11 of the United States Code.

“(e) Use by United States Trustees. The electronic case management system demonstrated under the project required by subsection (a) shall provide, at a minimum, the United States trustee in each district in which such system is operated with—

“(1) complete electronic case files which contain, in addition to the information listed in subsection (d), records of case openings, case closings, hearings, and the filing of all motions, trustee appointments, pleadings, and responses, as well as a record of the responses by the United States trustee to those motions, trustee appointments, and pleadings,

“(2) a means to generate standardized forms for motions, appointments, pleadings, and responses,

“(3) a means to generate standard management reports and letters on an exception basis,

“(4) a means to maintain accounting records, reports, and information required to be maintained by debtors in possession and trustees in cases under title 11 of the United States Code,

“(5) a means to calculate and record distribution to creditors, final applications and orders for distribution, and final case closing reports, and

“(6) a means to monitor the payment of filing and other required fees.

“(f) Availability to Certain Governmental Entities. Unlimited access to information maintained in the electronic case management system demonstrated under the project required by subsection (a) shall be provided at no charge to the following:

“(1) The Congress.

“(2) The Executive Office for the United States Trustees.

“(3) The Administrative Office of the United States Courts.

“(4) The clerks of the courts in judicial districts in which such system is operated and persons who review case information, in accordance with section 107(a) of title 11, United States Code [section 107(a) of Title 11], in the offices of the clerks.

“(5) The judges on the bankruptcy and district courts in districts in which such system is operated.

“(6) Trustees in cases pending in districts in which such system is operated.

“(g) Fees for Other Users. (1) The entity which is awarded a contract to provide the electronic case management system demonstrated under this project may, under guidelines established by the Director of the Executive Office for the United States Trustees in the provisions of such contract, collect reasonable fees from assets of the estate of the debtor in bankruptcy for providing notices and services to the court and trustees under the demonstration project.

“(2) Access to information maintained in electronic case files pursuant to the demonstration project may be provided to persons other than those specified in subsection (f), but such access shall be limited to viewing such information only. A reasonable charge for such access may be collected by the entity which is awarded a contract under this section, in accordance with the guidelines established by the Director of the Executive Office for the United States Trustees in such contract. A reasonable portion of any charge so collected may be required by the Director to be remitted to the Executive Office for United States Trustees and deposited in the United States Trustee System Fund established in section 589a of title 28, United States Code [section 589a of Title 28].

“(h) Security. Access provided under subsection (f) to an entity or an individual shall be subject to such security limitations as may be imposed by the Congress or the head of the affected entity.”

Cases Pending, Under the Bankruptcy Act. Section 311 of Pub.L. 99-554 provided that:

“At the end of one calendar year following the date the amendments made by subtitle A of title II of this Act [amendments by Pub.L. 99-554, Title II, §§ 201 to 231, which were approved Oct. 27, 1986] take effect in a district in which any case is still pending under the Bankruptcy Act [section 1 et seq. of former Title 11, Bankruptcy], the district court shall withdraw the reference of any such case and, after notice and a hearing, determine the status of the case. Such case shall be remanded to the bankruptcy judge with such instructions as are necessary for the prompt closing of the case and with a

requirement that a progress report on the case be provided by the bankruptcy judge

after such interval as the district court deems appropriate.”

Library References:

C.J.S. Bankruptcy §§ 194–198.

West’s Key No. Digests, Bankruptcy Ⓒ3001–3011.

§ 582. Assistant United States trustees

(a) The Attorney General may appoint one or more assistant United States trustees in any region when the public interest so requires.

(b) Each assistant United States trustee is subject to removal by the Attorney General.

Added Pub.L. 95–598, Title II, § 224(a), Nov. 6, 1978, 92 Stat. 2663 and amended Pub.L. 99–554, Title I, § 111(d), Oct. 27, 1986, 100 Stat. 3091.

Historical and Revision Notes

Effective Date of 1986 Amendment. Amendment by Pub.L. 99–554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99–554, set out as a note under section 581 of this title.

Appointment of United States Trustees by Attorney General. Appointment of Unit-

ed States Trustees by the Attorney General of individuals serving before effective date of Pub.L. 99–554, see section 309 of Pub.L. 99–554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy §§ 194–198.

West’s Key No. Digests, Bankruptcy Ⓒ3001–3011.

§ 583. Oath of office

Each United States trustee and assistant United States trustee, before taking office, shall take an oath to execute faithfully his duties.

Added Pub.L. 95–598, Title II, § 224(a), Nov. 6, 1978, 92 Stat. 2663.

Library References:

C.J.S. Bankruptcy §§ 194–198.

West’s Key No. Digests, Bankruptcy Ⓒ3001–3011.

§ 584. Official stations

The Attorney General may determine the official stations of the United States trustees and assistant United States trustees within the regions for which they were appointed.

Added Pub.L. 95–598, Title II, § 224(a), Nov. 6, 1978, 92 Stat. 2663, and amended Pub.L. 99–554, Title I, § 144(d), Oct. 27, 1986, 100 Stat. 3096.

Historical and Revision Notes

Effective Date of 1986 Amendment. Amendment by Pub.L. 99–554 effective 30 days

after Oct. 27, 1986, except as otherwise provided.

ed for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of this title.

Library References:

C.J.S. Attorney General §§ 7-15; Bankruptcy §§ 194-198.

West's Key No. Digests, Attorney General Ⓒ6; Bankruptcy Ⓒ3001-3011.

§ 585. Vacancies

(a) The Attorney General may appoint an acting United States trustee for a region in which the office of the United States trustee is vacant. The individual so appointed may serve until the date on which the vacancy is filled by appointment under section 581 of this title or by designation under subsection (b) of this section.

(b) The Attorney General may designate a United States trustee to serve in not more than two regions for such time as the public interest requires.

Added Pub.L. 95-598, Title II, § 224(a), Nov. 6, 1978, 92 Stat. 2663, and amended Pub.L. 99-554, Title I, § 112, Oct. 27, 1986, 100 Stat. 3091.

Historical and Revision Notes

Effective Date of 1986 Amendment. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provid-

ed for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of this title.

Library References:

C.J.S. Attorney General §§ 7-15; Bankruptcy §§ 194-198.

West's Key No. Digests, Attorney General Ⓒ6; Bankruptcy Ⓒ3001-3011.

§ 586. Duties; supervision by Attorney General

(a) Each United States trustee, within the region for which such United States trustee is appointed, shall—

(1) establish, maintain, and supervise a panel of private trustees that are eligible and available to serve as trustees in cases under chapter 7 of title 11;

(2) serve as and perform the duties of a trustee in a case under title 11 when required under title 11 to serve as trustee in such a case;

(3) supervise the administration of cases and trustees in cases under chapter 7, 11, 12, or 13 of title 11 by, whenever the United States trustee considers it to be appropriate—

(A)(i) reviewing, in accordance with procedural guidelines adopted by the Executive Office of the United States Trustee (which guidelines shall be applied uniformly by the United States trustee except when circumstances warrant different treatment), applications filed for compensation and reimbursement under section 330 of title 11; and

(ii) filing with the court comments with respect to such application and, if the United States Trustee considers it to be appropriate, objections to such application.

(B) monitoring plans and disclosure statements filed in cases under chapter 11 of title 11 and filing with the court, in connection with

hearings under sections 1125 and 1128 of such title, comments with respect to such plans and disclosure statements;

(C) monitoring plans filed under chapters 12 and 13 of title 11 and filing with the court, in connection with hearings under sections 1224, 1229, 1324, and 1329 of such title, comments with respect to such plans;

(D) taking such action as the United States trustee deems to be appropriate to ensure that all reports, schedules, and fees required to be filed under title 11 and this title by the debtor are properly and timely filed;

(E) monitoring creditors' committees appointed under title 11;

(F) notifying the appropriate United States attorney of matters which relate to the occurrence of any action which may constitute a crime under the laws of the United States and, on the request of the United States attorney, assisting the United States attorney in carrying out prosecutions based on such action;

(G) monitoring the progress of cases under title 11 and taking such actions as the United States trustee deems to be appropriate to prevent undue delay in such progress; and

(H) monitoring applications filed under section 327 of title 11 and, whenever the United States trustee deems it to be appropriate, filing with the court comments with respect to the approval of such applications;

(4) deposit or invest under section 345 of title 11 money received as trustee in cases under title 11:

(5) perform the duties prescribed for the United States trustee under title 11 and this title, and such duties consistent with title 11 and this title as the Attorney General may prescribe; and

(6) make such reports as the Attorney General directs.

(b) If the number of cases under chapter 12 or 13 of title 11 commenced in a particular region so warrants, the United States trustee for such region may, subject to the approval of the Attorney General, appoint one or more individuals to serve as standing trustee, or designate one or more assistant United States trustees to serve in cases under such chapter. The United States trustee for such region shall supervise any such individual appointed as standing trustee in the performance of the duties of standing trustee.

(c) Each United States trustee shall be under the general supervision of the Attorney General, who shall provide general coordination and assistance to the United States trustees.

(d) The Attorney General shall prescribe by rule qualifications for membership on the panels established by United States trustees under paragraph (a)(1) of this section, and qualifications for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11. The Attorney General may not require that an individual be an attorney in order to qualify for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11.

(e)(1) The Attorney General, after consultation with a United States trustee that has appointed an individual under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11, shall fix—

(A) a maximum annual compensation for such individual consisting of—

(i) an amount not to exceed the highest annual rate of basic pay in effect for level V of the Executive Schedule; and

(ii) the cash value of employment benefits comparable to the employment benefits provided by the United States to individuals who are employed by the United States at the same rate of basic pay to perform similar services during the same period of time; and

(B) a percentage fee not to exceed—

(i) in the case of a debtor who is not a family farmer, ten percent; or

(ii) in the case of a debtor who is a family farmer, the sum of—

(I) not to exceed ten percent of the payments made under the plan of such debtor, with respect to payments in an aggregate amount not to exceed \$450,000; and

(II) three percent of payments made under the plan of such debtor, with respect to payments made after the aggregate amount of payments made under the plan exceeds \$450,000;

based on such maximum annual compensation and the actual, necessary expenses incurred by such individual as standing trustee.

(2) Such individual shall collect such percentage fee from all payments received by such individual under plans in the cases under chapter 12 or 13 of title 11 for which such individual serves as standing trustee. Such individual shall pay to the United States trustee, and the United States trustee shall deposit in the United States Trustee System Fund—

(A) any amount by which the actual compensation of such individual exceeds 5 per centum upon all payments received under plans in cases under chapter 12 or 13 of title 11 for which such individual serves as standing trustee; and

(B) any amount by which the percentage for all such cases exceeds—

(i) such individual's actual compensation for such cases, as adjusted under subparagraph (A) of paragraph (1); plus

(ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases. Subject to the approval of the Attorney General, any or all of the interest earned from the deposit of payments under plans by such individual may be utilized to pay actual, necessary expenses without regard to the percentage limitation contained in subparagraph (d)(1)(B) of this section.

Added Pub.L. 95-598, Title II, § 224(a), Nov. 6, 1978, 92 Stat. 2663, and amended Pub.L. 99-554, Title I, § 113, Oct. 27, 1986, 100 Stat. 3091; Pub.L. 101-509, Title I, § 110(a) Nov. 5, 1990, 104 Stat. 1452; Pub.L. 103-394, Title II, § 224(a), Title V, § 502, October 22, 1994, 108 Stat. 4130, 4147.

Historical and Revision Notes

References in Text. Level V of the Executive Schedule, referred to in subsec. (e)(1)(A)(i), is set out in section 5316 of Title 5, Government Organization and Employees.

1994 Act. The amendment, modifying subsection (a)(3)(A), requires the United States Trustee to invoke procedural guidelines regarding fees in bankruptcy cases and file comments with fee applications.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

1990 Amendment. Subsec. (e)(1)(A). Pub.L. 101-509 substituted provision that the Attorney General fix a maximum annual compensation consisting of an amount not to exceed the highest annual rate of basic pay in effect for level V of the Executive Schedule and the cash value of employment benefits comparable to the employment benefits provided by the United States to individuals who are employed by the United States at the same rate of basic pay to perform similar services during the same period of time for provision that the Attorney General fix a maximum annual compensation not to exceed the annual rate of basic pay in effect for step 1 of grade GS-16 of the General Schedule prescribed under section 5332 of title 5.

Effective Date of 1990 Amendment. Section 110(b) of Pub.L. 101-509 provided that: “The amendment made by subsection (a) [amending subsec. (e)(1)(A) of this section] shall apply to any trustee to whom the provisions of section 302(d)(3) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-54: 100 Stat. 3121) [section 302(d)(3) of Pub.L. 99-554, set out as a note under section 581 of this title] apply.”

1986 Amendment. Subsec. (a). Pub.L. 99-554, § 113(a)(1), substituted “within the region for which such United States trustee is appointed shall” for “within his district, shall”.

Subsec. (a)(3). Pub.L. 99-554, § 113(a)(2)(A), substituted “of title 11 by, whenever the United States trustee considers it to be appropriate—” for “of title 11;”.

Subsec. (a)(3)(A) to (H). Pub.L. 99-554, § 113(a)(2)(B), added subpars. (A) to (H).

Subsec. (a)(5). Pub.L. 99-554, § 113(a)(3), added “and this title, and such duties consistent with title 11 and this title as the Attorney General may prescribe” following “under title 11”.

Subsec. (b). Pub.L. 99-554, § 113(b), substituted “under chapter 12 or 13” for “under chapter 13”, “particular region so warrants, the” for “particular judicial district so warrant”, “trustee for such region may” for “trustee for such district may”, “assistant United States trustees to serve in cases” for “assistant United States trustee, in cases”, and “trustee for such region shall” for “trustee for such district shall”.

Subsec. (d). Pub.L. 99-554, § 113(c), substituted “paragraph (a)(1)” for “subsection (a)(1)” and “chapter 12 or 13” for “chapter 13” wherever appearing in text.

Subsec. (e)(1). Pub.L. 99-554, § 113(c), substituted “chapter 12 or 13” for “chapter 13”, in subpar. (A) substituted “the annual rate” for “the lowest annual rate”, and “for step 1 of grade” for “for grade”, and in subpar. (B) substituted “a percentage fee not to exceed—” for “a percentage fee, not to exceed ten percent,” and added cls. (i) and (ii).

Subsec. (e)(2). Pub.L. 99-554, § 113(c), added “received by such individual” following “from all payments”, substituted “chapter 12 or 13” for “chapter 13” and “shall deposit in the United States Trustee System Fund” for “shall pay to the Treasury”.

Subsec. (e)(2)(A). Pub.L. 99-554, § 113(c), substituted “5 per centum upon all payments received under plans in cases under chapter 12 or 13” for “five percent upon all payments under plans in cases under chapter 13”.

Subsec. (e)(2)(B). Pub.L. 99-554, § 113(c), in cl. (i) substituted “such individual’s actual” for “such individual actual” and “of paragraph (1)” for “of this paragraph”, and in cl. (ii) added “Subject to the approval of the Attorney General, any or all of the interest earned from the deposit of payments under plans by such individual may be utilized to pay actual, necessary expenses without regard to the percentage limitation contained in subparagraph (d)(1)(B) of this section.”.

Effective Date of 1986 Amendments;
Effective Date of 1986 Amendments for

Certain Judicial Districts Not Served by United States Trustees and for Judicial Districts in Alabama and North Carolina; U.S. Trustee System Fund Deposits in Alabama and North Carolina; Effective Date of Title 11 Chapter 15 Repeal as to Northern District of Alabama; Authority of Certain Estate Administrators in Alabama and North Carolina; Effective Date of 1986 Amendments in Pending Cases Where a U.S. Trustee Not Authorized or Where a Trustee Files Final Report or Plan is Confirmed; Quarterly Fees. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of this title.

Amendment by Pub.L. 99-554, § 113, not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of

the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (I) of Pub.L. 99-554, set out as a note under section 581 of this title.

Amendment by Pub.L. 99-554, § 113, except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554, set out as a note under section 581 of this title.

See 1986 Amendment notes set out above.

Cross References

Compensation

For services or expenses not allowable for standing trustee, see 11 USCA § 326.

Payments to standing trustee, see 11 USCA § 1326.

Nondiscrimination in appointment, see 28 CFR § 58.5 *infra*.

Private trustees

Authorization to establish panels, see 28 CFR § 58.1 *infra*.

Interim trustee, see 11 USCA § 701.

Qualification for membership on panels, see 28 CFR § 58.3 *infra*.

Successor trustee, see 11 USCA § 703.

Suspension and removal, see 28 CFR § 58.6 *infra*.

Standing trustees

Authorization to appoint, see 28 CFR § 58.2 *infra*.

Chapter 13, see 11 USCA § 1302.

Chapter 12, see 11 USCA § 1202.

Qualification for appointment, see 28 CFR § 58.4 *infra*.

Suspension and removal, see 28 CFR § 58.6 *infra*.

Library References:

C.J.S. Attorney General §§ 7-15; Bankruptcy §§ 194-198.

West's Key No. Digests, Attorney General ⌘6; Bankruptcy ⌘3001-3011.

§ 587. Salaries

Subject to sections 5315 through 5317 of title 5, the Attorney General shall fix the annual salaries of United States trustees and assistant United States trustees at rates of compensation not in excess of the rate of basic compensation provided for Executive Level IV of the Executive Schedule set forth in section 5315 of title 5, United States Code.

Added Pub.L. 95-598, Title II, § 224(a), Nov. 6, 1978, 92 Stat. 2664, and amended Pub.L. 99-554, Title I, § 114(a), Oct. 27, 1986, 100 Stat. 3093.

Historical and Revision Notes

Effective Date of 1986 Amendment. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provid-

ed for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of this title.

Library References:

C.J.S. Attorney General §§ 7-15; Bankruptcy § 232.
West's Key No. Digests, Attorney General ⌘6; Bankruptcy ⌘3152.

§ 588. Expenses

Necessary office expenses of the United States trustee shall be allowed when authorized by the Attorney General.

Added Pub.L. 95-598, Title II, § 224(a), Nov. 6, 1978, 92 Stat. 2664.

Library References:

C.J.S. Attorney General §§ 7-15; Bankruptcy § 232.
West's Key No. Digests, Attorney General ⌘6; Bankruptcy ⌘3152.

§ 589. Staff and other employees

The United States trustee may employ staff and other employees on approval of the Attorney General.

Added Pub.L. 95-598, Title II, § 224(a), Nov. 6, 1978, 92 Stat. 2664.

Historical and Revision Notes

Temporary Suspension of Limitation on Appointments. Pub.L. 99-554, Title I, § 114(b), Oct. 27, 1986, 100 Stat. 3093, provided that: "During the period beginning on the effective date of this Act [see section 302 of Pub.L. 99-554, set out as a note under section 581 of this title] and ending on October 1, 1989, the provisions of title 5 of the United States Code [Title 5, Government Organization and Employees] governing appointments in the competitive service shall not apply with respect to appointments under section 589 of title 28, United States Code [this section]."

U.S. Trustee System Fund Deposits in Alabama and North Carolina. Deposit in the general receipts of the Treasury of funds collected as a result of the amendments made by section 117 of Pub.L. 99-554 in a judicial district in the States of Alabama or North Carolina under section 1930(a) of Title 28 before the date the amendments made by sections 201 to 231 of Pub.L. 99-554 take effect in such districts, and notwithstanding section 589a of Title 28, see section 302(d)(3)(G) of Pub.L. 99-554, set out as a note under section 581 of this title.

Library References:

C.J.S. Attorney General §§ 7-15; Bankruptcy §§ 194, 195, 197.
West's Key No. Digests, Attorney General ⌘6; Bankruptcy ⌘3001, 3008.1.

§ 589a. United States Trustee System Fund

(a) There is hereby established in the Treasury of the United States a special fund to be known as the “United States Trustee System Fund” (hereinafter in this section referred to as the “Fund”). Monies in the Fund shall be available to the Attorney General without fiscal year limitation in such amounts as may be specified in appropriations Acts for the following purposes in connection with the operations of United States trustees—

- (1) salaries and related employee benefits;
- (2) travel and transportation;
- (3) rental of space;
- (4) communication, utilities, and miscellaneous computer charges;
- (5) security investigations and audits;
- (6) supplies, books, and other materials for legal research;
- (7) furniture and equipment;
- (8) miscellaneous services, including those obtained by contract; and
- (9) printing.

(b) For the purpose of recovering the cost of services of the United States Trustee System, there shall be deposited as offsetting collections to the appropriation “United States Trustee System Fund”, to remain available until expended, the following—

- (1) 27.42 percent of the fees collected under section 1930(a)(1) of this title;
- (2) one-half of the fees collected under section 1930(a)(3) of this title;
- (3) one-half of the fees collected under section 1930(a)(4) of this title;
- (4) one-half of the fees collected under section 1930(a)(5) of this title;
- (5) 100 percent of the fees collected under section 1930(a)(6) of this title;
- (6) three-fourths of the fees collected under the last sentence of section 1930(a) of this title;
- (7) the compensation of trustees received under section 330(d) of title 11 by the clerks of the bankruptcy courts;
- (8) excess fees collected under section 586(e)(2) of this title; and
- (9) interest earned on Fund investment.

(c) Amounts in the Fund which are not currently needed for the purposes specified in subsection (a) shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(d) The Attorney General shall transmit to the Congress, not later than 120 days after the end of each fiscal year, a detailed report on the amounts deposited in the Fund and a description of expenditures made under this section.

(e) There are authorized to be appropriated to the Fund for any fiscal year such sums as may be necessary to supplement amounts deposited under subsection (b) for the purposes specified in subsection (a).

Added Pub.L. 99-554, Title I, § 115(a), Oct. 27, 1986, 100 Stat. 3094; amended Pub.L. 101-162, Title IV, § 406(c), Nov. 21, 1989, 103 Stat. 1016; Pub.L. 102-140, Title I, § 111(b), (c), Oct. 28, 1991, 105 Stat. 795; Pub.L. 103-121, Title I, § 111(a)(2), (b)(2), (3), Oct. 27, 1993, 107 Stat. 1164; Pub.L. 104-91, Title I, § 101(a), Jan. 6, 1996, 110 Stat. 11, as amended Pub.L. 104-99, Title II, § 211, Jan. 26, 1996, 110 Stat. 37; Pub.L. 104-208, Div. A, Title I, § 101(a) [Title I, § 109(b)], Sept. 30, 1996, 110 Stat. 3009-18; Pub.L. 106-113, Div. B, § 1000(a)(1) [Title I, § 113], Nov. 29, 1999, 113 Stat. 1535, 1501A-6, 1501A-20.

Historical and Revision Notes

Codifications. Section 101(a) of Pub.L. 104-91, as amended by section 211 of Pub.L. 104-99, provided in part that section 111(b) and (c) of the General Provisions for the Department of Justice in Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (H.R. 2076) as passed by the House of Representatives on Dec. 6, 1995, was enacted into permanent law. Such section 111(b) and (c) of H.R. 2076 amended subsecs. (b) and (f) of this section. See 1996 Amendments notes set out under this section.

Amendments

1999 Amendments. Subsec. (b)(1). Pub.L. 106-113 [s 113] substituted “27.42 percent” for “23.08 percent”.

Subsec. (b)(9). Pub.L. 106-113 [Title I] added par. (9).

1996 Amendments. *Subsec. (b).* Pub.L. 104-208, § 101(a) [s 109(b)], substituted provisions requiring amounts to be deposited as offsetting collections to the appropriation “United States Trustee System Fund” for the purpose of recovering the cost of services of the United States Trustee System for provisions requiring amounts to be deposited in the Fund.

Subsec. (b)(2). Pub.L. 104-208, § 101(a) [s 109(b)], increased the percentage of fees to be deposited under § 1930(a)(3) from 37.5% to 50%.

Subsec. (b)(5). Pub.L. 104-208, § 101(a) [s 109(b)], increased the fees collected under § 1930(a)(6) from 60% until a reorganization plan is confirmed to 100%.

Pub.L. 104-91, § 101(a), as amended Pub.L. 104-99, § 211, inserted provisions relating to confirmation of reorganization plan. See Codifications note set out under this section.

Subsec. (b)(8). Pub.L. 104-208, § 101(a) [s 109(b)], added par. (8).

Subsec. (c). Pub.L. 104-208, § 101(a) [s 109(b)], struck out par. (1) designation, struck out reference to the exception provided in par. (2), and struck out par. (2), which required the Secretary of the Treasury on each Nov. 1, to transfer certain Fund amounts exceeding 110% into the general fund of the Treasury.

Subsec. (d). Pub.L. 104-208, § 101(a) [s 109(b)], struck out par. (1) designation, and struck out par. (2), which required the Secretary in certain instances to include in the report a recommendation regarding the manner in which fees payable under § 1930(a) of title 28 may be modified to cause the annual amount deposited to more closely approximate the annual amount expended.

Subsec. (f). Pub.L. 104-208, § 101(a) [s 109(b)], struck out subsec. (f), which required 12.5% of fees collected under § 1930(a)(3), 40% of fees collected under § 1930(a)(6) until a reorganization plan is confirmed, and 100% of the fees collected under § 1930(a)(6) after the reorganization plan is confirmed, to be deposited to the Fund as offsetting collections.

Subsec. (f)(2). Pub.L. 104-91, § 101(a), as amended Pub.L. 104-99, § 211, inserted provisions relating to confirmation of reorganization plan. See Codifications note set out under this section.

Subsec. (f)(3). Pub.L. 104-91, § 101(a), as amended Pub.L. 104-99, § 211, added par. (3). See Codifications note set out under this section.

1993 Amendments. Subsec. (b)(1). Pub.L. 103-121, § 111(a)(2), substituted “23.08 per centum” for “one-fourth”.

Subsec. (b)(2). Pub.L. 103-121, § 111(b)(2), substituted “37.5 per centum” for “50 per centum”.

Subsec. (f)(1). Pub.L. 103-121, § 111(b)(3), substituted “12.5 per centum” for “16.7 per centum”.

1991 Amendments. Subsec. (b)(2). Pub.L. 102-140, § 111(b)(1), substituted “50 per centum” for “three-fifths”.

Subsec. (b)(5). Pub.L. 102-140, § 111(b)(2), substituted “60 per centum” for “all”.

Subsec. (f). Pub.L. 102-140, § 111(c), added subsec. (f).

1989 Amendments. Subsec. (b)(1). Pub.L. 101-162, § 406(c), substituted “one-fourth” for “one-third”.

Effective and Applicability Provisions

1999 Acts. Pub.L. 106-113, Div. B, § 1000(a)(1), [Title I, § 113], Nov. 29, 1999, 113 Stat. 1535, 1501A-20, provided in part that section 113 (amending this section and section 1930 of this title and provisions set out as a note under section 1931 of this title) is “(e)ffective 30 days after the enactment of this Act [Department of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 2000, Pub.L. 106-113, Div. B, § 1000(a)(1), Nov. 29, 1999, 113 Stat. 1535, 1501A-3; see Tables for complete classification]”.

1996 Acts. Pub.L. 104-208, Div. A, Title I, § 101(a) [Title I, § 109(c)], Sept. 30, 1996, 110 Stat. 3009-19, provided that: “Notwithstand-

ing any other provision of law or of this Act [Pub.L. 104-208, Sept. 30, 1996, 110 Stat. 3009, see Tables for classification] the amendments to 28 U.S.C. 589a [this section] made by subsection (b) of this section shall take effect upon enactment of this Act [probably means the date of enactment of Pub.L. 104-208, 110 Stat. 3009, which was approved Sept. 30, 1996].”

1993 Acts. Section 111(a) of Pub.L. 103-121 provided in part that amendment by section 111(a)(2) of Pub.L. 103-121, amending subsec. (b)(1) of this section, is effective 30 days after Oct. 27, 1993.

Section 111(b) of Pub.L. 103-121 provided in part that amendment by section 111(b)(2) and (3) of Pub.L. 103-121, amending subssecs. (b)(2) and (f)(1) of this section, is effective 30 days after Oct. 27, 1993.

1991 Acts. Section 111 of Pub.L. 102-140 provided that the amendment made by that section is effective 60 days after Oct. 28, 1991.

1986 Acts. Enactment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided, see section 302(a) of Pub.L. 99-554, as amended, set out as a note under section 581 of this title.

Library References:

C.J.S. Attorney General §§ 7-15; Bankruptcy § 232.

West's Key No. Digests, Attorney General ☞6; Bankruptcy ☞3152.

PART III—COURT OFFICERS AND EMPLOYEES

CHAPTER 41—ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

§ 604. Duties of Director generally

(a) The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States, shall:

(1) Supervise all administrative matters relating to the offices of clerks and other clerical and administrative personnel of the courts;

(2) Examine the state of the dockets of the courts; secure information as to the courts' need of assistance; prepare and transmit semiannually to the chief judges of the circuits, statistical data and reports as to the business of the courts;

(3) Submit to the annual meeting of the Judicial Conference of the United States, at least two weeks prior thereto, a report of the activities of the Administrative Office and the state of the business of the courts, together with the statistical data submitted to the chief judges of the circuits under

paragraph (a)(2) of this section, and the Director's recommendations, which report, data and recommendations shall be public documents.

(4) Submit to Congress and the Attorney General copies of the report, data and recommendations required by paragraph (a)(3) of this section;

(5) Fix the compensation of clerks of court, deputies, librarians, criers, messengers, law clerks, secretaries, stenographers, clerical assistants, and other employees of the courts whose compensation is not otherwise fixed by law, and, notwithstanding any other provision of law, pay on behalf of Justices and judges of the United States appointed to hold office during good behavior, aged 65 or over, any increases in the cost of Federal Employees' Group Life Insurance imposed after April 24, 1999, including any expenses generated by such payments, as authorized by the Judicial Conference of the United States;

(6) Determine and pay necessary office expenses of courts, judges, and those court officials whose expenses are by law allowable, and the lawful fees of United States Commissioners;

(7) Regulate and pay annuities to widows and surviving dependent children of justices and judges of the United States, judges of the United States Court of Federal Claims, bankruptcy judges, United States magistrates, Directors of the Federal Judicial Center, and Directors of the Administrative Office, and necessary travel and subsistence expenses incurred by judges, court officers and employees, and officers and employees of the Administrative Office, and the Federal Judicial Center, while absent from their official stations on official business, without regard to the per diem allowances and amounts for reimbursement of actual and necessary expenses established by the Administrator of General Services under section 5702 of title 5, except that the reimbursement of subsistence expenses may not exceed that authorized by the Director for judges of the United States under section 456 of this title;

(8) Disburse, directly or through the several United States marshals, moneys appropriated for the maintenance and operation of the courts;

(9) Establish pretrial services pursuant to section 3152 of title 18, United States Code;

(10)(A) Purchase, exchange, transfer, distribute, and assign the custody of lawbooks, equipment, supplies, and other personal property for the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)); (B) provide or make available readily to each court appropriate equipment for the interpretation of proceedings in accordance with section 1828 of this title; and (C) enter into and perform contracts and other transactions upon such terms as the Director may deem appropriate as may be necessary to the conduct of the work of the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)), and contracts for nonpersonal services providing pretrial services, for the interpretation of proceedings, and for the provision of special interpretation services pursuant to section 1828 of this title may be awarded without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5);

(11) Audit vouchers and accounts of the courts, the Federal Judicial Center, the offices providing pretrial services, and their clerical and administrative personnel;

(12) Provide accommodations for the courts, the Federal Judicial Center, the offices providing pretrial services and their clerical and administrative personnel;

(13) Lay before Congress, annually, statistical tables that will accurately reflect the business transacted by the several bankruptcy courts, and all other pertinent data relating to such courts;

(14) Pursuant to section 1827 of this title, establish a program for the certification and utilization of interpreters in courts of the United States;

(15) Pursuant to section 1828 of this title, establish a program for the provision of special interpretation services in courts of the United States;

(16)(A) In those districts where the Director considers it advisable based on the need for interpreters, authorize the full-time or part-time employment by the court of certified interpreters; (B) where the Director considers it advisable based on the need for interpreters, appoint certified interpreters on a full-time or part-time basis, for services in various courts when he determines that such appointments will result in the economical provision of interpretation services; and (C) pay out of moneys appropriated for the judiciary interpreters' salaries, fees, and expenses, and other costs which may accrue in accordance with the provisions of sections 1827 and 1828 of this title;

(17) In the Director's discretion, (A) accept and utilize voluntary and uncompensated (gratuitous) services, including services as authorized by section 3102(b) of title 5, United States Code; and (B) accept, hold, administer, and utilize gifts and bequests of personal property for the purpose of aiding or facilitating the work of the judicial branch of Government, but gifts or bequests of money shall be covered into the Treasury;

(18) Establish procedures and mechanisms within the judicial branch for processing fines, restitution, forfeitures of bail bonds or collateral, and assessments;

(19) Regulate and pay annuities to bankruptcy judges and United States magistrates in accordance with section 377 of this title and paragraphs (1)(B) and (2) of section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988;

(20) Periodically compile—

(A) the rules which are prescribed under section 2071 of this title by courts other than the Supreme Court;

(B) the rules which are prescribed under section 372(c)(11) of this title; and

(C) the orders which are required to be publicly available under section 372(c)(15) of this title;

so as to provide a current record of such rules and orders;

(21) Establish a program of incentive awards for employees of the judicial branch of the United States Government, other than any judge who is entitled to hold office during good behavior;

(22) Receive and expend, either directly or by transfer to the United States Marshals Service or other Government agency, funds appropriated for the procurement, installation, and maintenance of security equipment and protective services for the United States Courts in courtrooms and adjacent areas, including building ingress/egress control, inspection of packages, directed security patrols, and other similar activities;

(23) Regulate and pay annuities to judges of the United States Court of Federal Claims in accordance with section 178 of this title; and¹

(24)² Perform such other duties as may be assigned to him by the Supreme Court or the Judicial Conference of the United States.³

(24)² Lay before Congress, annually, statistical tables that will accurately reflect the business imposed on the Federal courts by the savings and loan crisis.

(b) The clerical and administrative personnel of the courts shall comply with all requests by the Director for information or statistical data as to the state of court dockets.

(c) Inspection of court dockets outside the continental United States may be made through United States officials residing within the jurisdiction where the inspection is made.

(d) The Director, under the supervision and direction of the conference, shall:

(1) supervise all administrative matters relating to the offices of the United States magistrates;

(2) gather, compile, and evaluate all statistical and other information required for the performance of his duties and the duties of the conference with respect to such officers;

(3) lay before Congress annually statistical tables and other information which will accurately reflect the business which has come before the various United States magistrates, including (A) the number of matters in which the parties consented to the exercise of jurisdiction by a magistrate, (B) the number of appeals taken pursuant to the decisions of magistrates and the disposition of such appeals, and (C) the professional background and qualifications of individuals appointed under section 631 of this title to serve as magistrate;

(4) prepare and distribute a manual, with annual supplements and periodic revisions, for the use of such officers, which shall set forth their powers and duties, describe all categories of proceedings that may arise before them, and contain such other information as may be required to enable them to discharge their powers and duties promptly, effectively, and impartially.

(e) The Director may promulgate appropriate rules and regulations approved by the conference and not inconsistent with any provision of law, to assist him in

1. So in original. The word "and" probably should not appear.

2. So in original. Two pars. (24) have been enacted.

3. So in original. The period probably should be "; and".

the performance of the duties conferred upon him by subsection (d) of this section. Magistrates shall keep such records and make such reports as are specified in such rules and regulations.

(f) The Director may make, promulgate, issue, rescind, and amend rules and regulations (including regulations prescribing standards of conduct for Administrative Office employees) as may be necessary to carry out the Director's functions, powers, duties, and authority. The Director may publish in the Federal Register such rules, regulations, and notices for the judicial branch of Government as the Director determines to be of public interest; and the Director of the Federal Register hereby is authorized to accept and shall publish such materials.

(g)(1) When authorized to exchange personal property, the Director may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or in part payment for the property acquired, but any transaction carried out under the authority of this subsection shall be evidenced in writing.

(2) The Director hereby is authorized to enter into contracts for public utility services and related terminal equipment for periods not exceeding ten years.

(3)(A) In order to promote the recycling and reuse of recyclable materials, the Director may provide for the sale or disposal of recyclable scrap materials from paper products and other consumable office supplies held by an entity within the judicial branch.

(B) The sale or disposal of recyclable materials under subparagraph (A) shall be consistent with the procedures provided in section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) for the sale of surplus property.

(C) Proceeds from the sale of recyclable materials under subparagraph (A) shall be deposited as offsetting collections to the fund established under section 1931 of this title and shall remain available until expended to reimburse any appropriations for the operation and maintenance of the judicial branch.

(h)(1) The Director shall, out of funds appropriated for the operation and maintenance of the courts, provide facilities and pay necessary expenses incurred by the judicial councils of the circuits and the Judicial Conference under section 372 of this title, including mileage allowance and witness fees, at the same rate as provided in section 1821 of this title. Administrative and professional assistance from the Administrative Office of the United States Courts may be requested by each judicial council and the Judicial Conference for purposes of discharging their duties under section 372 of this title.

(2) The Director of the Administrative Office of the United States Courts shall include in his annual report filed with the Congress under this section a summary of the number of complaints filed with each judicial council under section 372(c) of this title, indicating the general nature of such complaints and the disposition of those complaints in which action has been taken.

June 25, 1948, c. 646, 62 Stat. 914; Aug. 3, 1956, c. 944, § 3, 70 Stat. 1026; Dec. 20, 1967, Pub.L. 90-219, Title II, § 203, 81 Stat. 669; Oct. 17, 1968, Pub.L. 90-578, Title II, § 201, 82 Stat. 1114; Aug. 22, 1972, Pub.L. 92-397, § 4, 86 Stat. 580; Jan. 3, 1975, Pub.L. 93-619, Title II, § 204, 88 Stat. 2089; Oct. 28, 1978, Pub.L. 95-539, §§ 3, 4, 92 Stat. 2043; Nov. 6, 1978, Pub.L. 95-598, Title II, § 225, 92 Stat. 2664; Oct. 10, 1979, Pub.L. 96-82, § 5, 93 Stat. 645; Oct. 15, 1980, Pub.L.

96-458, § 5, 94 Stat. 2040; Dec. 12, 1980, Pub.L. 96-523, § 1(c)(1), 94 Stat. 3040; Sept. 27, 1982, Pub.L. 97-267, § 7, 96 Stat. 1139; Oct. 27, 1986, Pub.L. 99-554, Title I, § 116, 100 Stat. 3095; Dec. 11, 1987, Pub.L. 100-185, § 2, 101 Stat. 1279; Nov. 15, 1988, Pub.L. 100-659, § 6(a), 102 Stat. 3918; Nov. 19, 1988, Pub.L. 100-702, Title IV, § 402(a), Title X, §§ 1008, 1010, 1011, 1020(a)(2), 102 Stat. 4650, 4667, 4668, 4671; Oct. 30, 1990, Pub.L. 101-474, § 5(r), 104 Stat. 1101; Nov. 29, 1990, Pub.L. 101-647, Title XXV, § 2548, 104 Stat. 4888; Dec. 1, 1990, Pub.L. 101-650, Title III, §§ 306(e)(1), 325(c)(1), 104 Stat. 5111, 5121; Oct. 29, 1992, Pub.L. 102-572, Title V, § 503, Title IX, § 902(b)(1), 106 Stat. 4513, 4516; Nov. 29, 1999, Pub.L. 106-113, § 1000(a)(1) [Title III, § 305], 113 Stat. 1535, 1501A-37.

Historical and Revision Notes

References in Text. Section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, referred to in subsec. (a)(19), is section 2(c) of Pub.L. 100-659, Nov. 15, 1988, 102 Stat. 3916, which is set out as a note under section 377 of this title.

Codifications. Pub.L. 101-650, § 306(e)(1)(A), directing amendment of Pub.L. 100-702, § 402(1), probably intended amendment of section 402(a)(1) of Pub.L. 100-702, which provided for redesignation of subsec. (a)(19) to be subsec. (a)(23) of this section, redesignated as subsec. (a)(24) by Pub.L. 101-650, § 306(e)(1)(B)(ii).

Amendments

1999 Amendments. Subsec. (a)(5). Pub.L. 106-113 [s 305] inserted provisions regarding payment on behalf of Justices and judges of the United States appointed to hold office during good behavior, aged 65 or over, any increases in the cost of Federal Employees' Group Life Insurance imposed after April 24, 1999, including expenses.

1992 Amendments. Subsec. (a)(7), (23). Pub.L. 102-572, § 902(b)(1), substituted "United States Court of Federal Claims" for "United States Claims Court".

Subsec. (g)(3). Pub.L. 102-572, § 503, added par. (3).

1990 Amendments. Subsec. (a)(7). Pub.L. 101-650, § 325(c)(1), amended Pub.L. 100-702, § 1011, resulting in the substitution of "except that" for "Provided, That" in par. (7), and deleted directory language which would have required substitution of a comma for a semicolon at the end of par. (7) as it existed prior to amendment by Pub.L. 100-702. See 1988 Amendments note under this section.

Pub.L. 101-650, § 306(e)(1)(B)(i), inserted "judges of the United States Claims Court," preceding "bankruptcy judges".

Subsec. (a)(19). Pub.L. 101-474, § 5(r), and Pub.L. 101-650, § 306(e)(1)(A), identically amended Pub.L. 100-702, § 402(a)(1), redesignating par. (19) as (23). See 1988 Amendments note under this section.

Subsec. (a)(23). Pub.L. 101-650, § 306(e)(1)(B)(iii), added par. (23). Former par. (23) redesignated (24).

Pub.L. 101-474, § 5(r), and Pub.L. 101-650, § 306(e)(1)(A), identically amended Pub.L. 100-702, § 402(a)(1), redesignating par. (19) as (23). See 1988 Amendments note under this section.

Subsec. (a)(24). Pub.L. 101-650, § 306(e)(1)(B)(iii), redesignated par. (23), relating to performance of other duties, as (24).

Pub.L. 101-647 added par. (24) relating to statistical tables.

1988 Amendments. Subsec. (a)(2). Pub.L. 100-702, § 1020(a)(2), substituted "semiannually" for "quarterly".

Subsec. (a)(7). Pub.L. 100-702, § 1011, which directed substitution of a comma for a semicolon at the end of par. (7) and added thereafter "without regard to the per diem allowances and amounts for reimbursement of actual and necessary expenses established by the Administrator of General Services under section 5702 of title 5: Provided, That the reimbursement of subsistence expenses may not exceed that authorized by the Director for judges of the United States under section 456 of this title;" was executed by inserting said provisions following the comma at the end of par. (7), as the probable intent of Congress.

Pub.L. 100-659, § 6(a)(1), inserted after "United States," the words "bankruptcy judges, United States magistrates,".

Subsec. (a)(14)-(17). Pub.L. 100-702, § 1008(1), redesignated second par. (14) relating to the provision of special interpretation services in courts of the United States, through par. (17) as pars. (15) through (18), respectively.

Subsec. (a)(18). Pub.L. 100-702, § 1008(1), redesignated par. (17) as (18). Former par. (18), as added by Pub.L. 100-659, redesignated (19).

Pub.L. 100-659, § 6(a)(3), added par. (18). Former par. (18) redesignated (19).

Subsec. (a)(19). Pub.L. 100-702, § 1008(1), redesignated par. (19), as added by Pub.L. 100-702, § 402(a)(2), as (20).

Pub.L. 100-702, § 402(a), which directed the redesignation of par. (18) as (23) and the addition of par. (19) was executed by redesignating par. (19), relating to performance of other duties, as (23) and adding par. (19), relating to compilation of rules and orders, to reflect the probable intent of Congress.

Pub.L. 100-659, § 6(a)(2), redesignated par. (18), relating to performance of other duties, as (19).

Subsec. (a)(20). Pub.L. 100-702, § 1008(1), redesignated par. (19), as added by Pub.L. 100-702, § 402(a)(2), as par. (20).

Subsec. (a)(21). Pub.L. 100-702, § 1008(2), added par. (21).

Subsec. (a)(22). Pub.L. 100-702, § 1010, added par. (22).

Subsec. (a)(23). Pub.L. 100-702, § 402(a)(1), redesignated par. (19), relating to performance of other duties, as (23).

1987 Amendments. *Subsec. (a)(17), (18).* Pub.L. 100-185, § 2, added par. (17) and redesignated former par. (17) as (18).

1986 Amendments. *Subsec. (f).* Pub.L. 99-554 struck out subsec. (f) as added by section 225(b) of Pub.L. 95-598, which related to the Director naming qualified persons to membership on the panel of trustees, their number, qualifications, removal, etc.

1982 Amendments. *Subsec. (a)(9).* Pub.L. 97-267, § 7(1), struck out "agencies" following "pretrial services".

Subsec. (a)(10). Pub.L. 97-267, § 7(2), substituted "providing pretrial services" for "for pretrial services agencies".

Subsec. (a)(11), (12). Pub.L. 97-267, § 7(3), (4), substituted "offices providing pretrial services" for "pretrial service agencies" in par. (11), and "offices providing pretrial services" for "pretrial services agencies" in par. (12), respectively.

1980 Amendments. *Subsec. (a)(16)(A).* Pub.L. 96-523 added "(b)" following "3102".

Subsec. (h). Pub.L. 96-458 added subsec. (h).

1979 Amendments. *Subsec. (d)(3).* Pub.L. 96-82 added cls. (A), (B), and (C).

1978 Amendments. *Subsec. (a)(10).* Pub.L. 95-539, § 3(a), expanded the duties of the Director to include providing or making available equipment for interpretation of proceedings in accordance with section 1828 of this title and to include entering into and performing contracts necessary to the conduct of the work of the judicial branch and exempted from the provisions of section 5 of Title 41 contracts for nonpersonal services for pretrial agencies, for interpretation of proceedings, and for special interpretation services pursuant to section 1828 of this title.

Subsec. (a)(13), (14). Pub.L. 95-598, § 225(a), added par. (13), relating to annual statistical tables reflecting the business of the several bankruptcy courts and redesignated former par. (13), relating to provision of special interpretation services in courts of the United States, as (14).

Subsec. (a)(13) to (16). Pub.L. 95-539, § 3(b), (c), added pars. (13) to (16). Former par. (13) redesignated (17).

Subsec. (a)(17). Pub.L. 95-539, § 3(b), redesignated former par. (13) as (17).

Subsec. (f). Pub.L. 95-598, § 225(b), added subsec. (f), relating to the naming of qualified persons to membership on the panel of trustees.

Subsecs. (f), (g). Pub.L. 95-539, § 4, added subsecs. (f) and (g).

1975 Amendments. *Subsec. (a)(9).* Pub.L. 93-619 added par. (9). Former par. (9) redesignated (10).

Subsec. (a)(10). Pub.L. 93-619 redesignated former par. (9) as (10), and in par. (10) as so redesignated, substituted "the offices of the United States magistrates and commissioners, and the offices of pretrial services agencies" for "and the Administrative Office and the offices of the United States magistrates". Former par. (10) redesignated (11).

Subsec. (a)(11). Pub.L. 93-619 redesignated former par. (10) as par. (11), and in par. (11), as so redesignated, added reference to pretrial service agencies. Former par. (11) redesignated (12).

Subsec. (a)(12). Pub.L. 93-619 redesignated former par. (11) as (12), and in par. (12) as so redesignated, added reference to pretrial service agencies. Former par. (12) redesignated (13).

Subsec. (a)(13). Pub.L. 93-619 redesignated former par. (12) as (13).

1972 Amendments. *Subsec. (a)(7).* Pub.L. 92-397 substituted "children of justices and judges of the United States" for "children of judges".

1968 Amendments. *Subsec. (a)(9).* Pub.L. 90-578, § 201(a), substituted "United States magistrates" for "United States Commissioners".

Subsecs. (d), (e). Pub.L. 90-578, § 201(b), added subsecs. (d) and (e).

1967 Amendments. *Subsec. (a)(7).* Pub.L. 90-219, § 203(a), inserted ", Directors of the Federal Judicial Center, and Directors of the Administrative Office," following "judges" and "and the Federal Judicial Center," following "Administrative Office".

Subsec. (a)(9). Pub.L. 90-219, § 203(b), inserted ", the Federal Judicial Center," following "courts."

Subsec. (a)(10). Pub.L. 90-219, § 203(c), inserted ", the Federal Judicial Center," following "courts."

Subsec. (a)(11). Pub.L. 90-219, § 203(c), inserted ", the Federal Judicial Center," following "courts".

1956 Amendments. *Subsec. (a)(7).* Act Aug. 3, 1956, inserted "annuities to widows and surviving dependent children of judges and" following "Regulate and pay".

Effective and Applicability Provisions

1992 Acts. Amendment by section 902(b)(1) of Pub.L. 102-572 effective Oct. 29, 1992, see section 911 of Pub.L. 102-572, set out as a note under section 171 of this title.

Amendment by Pub.L. 102-572 effective Jan. 1, 1993, see section 1101(a) of Pub.L. 102-572, set out as a note under section 905 of Title 2, The Congress.

1990 Acts. Amendment by section 306(e)(1) of Pub.L. 101-650 applicable to judges of, and senior judges in active service with, the United

States Court of Federal Claims on or after Dec. 1, 1990, see section 306(f) of Pub.L. 101-650, set out as a note under section 8331 of Title 5, Government Organization and Employees.

1988 Acts. Amendment by section 402(a) of Pub.L. 100-702 effective Dec. 1, 1988, see section 407 of Pub.L. 100-702, set out as a note under section 2071 of this title.

Amendment to this section by Pub.L. 100-659 to take effect on Nov. 15, 1988, and shall apply to bankruptcy judges and magistrates who retire on or after Nov. 15, 1988, with special election provisions for bankruptcy judges, etc., who left office on or after July 31, 1987, and before Nov. 15, 1988, see section 9 of Pub.L. 100-659, set out as a note under section 377 of this title.

1986 Acts. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided, see section 302(a) of Pub.L. 99-554, as amended, set out as a note under section 581 of this title.

1980 Acts. Amendment by Pub.L. 96-523 effective sixty days after Dec. 12, 1980, see section 3 of Pub.L. 96-523, set out as a note under section 3102 of Title 5, Government Organization and Employees.

Amendment by Pub.L. 96-458 effective Oct. 1, 1981, see section 7 of Pub.L. 96-458, set out as a note under section 331 of this title.

1978 Acts. Amendment by Pub.L. 95-598 effective Oct. 1, 1979, see section 402(c) of Pub.L. 95-598, as amended, set out as a note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub.L. 95-539 effective Oct. 28, 1978, see section 10(a) of Pub.L. 95-539, set out as a note under section 602 of this title.

1968 Acts. Amendment by Pub.L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates and assumption of office takes place or third anniversary of enactment of Pub.L. 90-578 on Oct. 17, 1968, see section 403 of Pub.L. 90-578, set out as a note under section 631 of this title.

Change of Name. References to United States Claims Court deemed to refer to United States Court of Federal Claims and references to Claims Court deemed to refer to Court of Federal Claims, see section 902(b) of Pub.L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub.L. 101-650, set out as a note under section 631 of this title.

Reference to United States Commissioners deemed to be reference to United States Magistrates pursuant to Pub.L. 90-578, Title IV, § 402(b)(2), Oct. 17, 1968, 82 Stat. 1108. See chapter 43 (section 631 et seq.) of this title.

Library References:

C.J.S. Federal Courts §§ 1 et seq.

West's Key No. Digests, Federal Courts ☞ 1 et seq.

CHAPTER 44—ARBITRATION

Sec.

- 651. Authorization of arbitration.
- 652. Jurisdiction.
- 653. Powers of arbitrator; arbitration hearing.
- 654. Arbitration award and judgment.
- 655. Trial de novo.
- 656. Certification of arbitrators.
- 657. Compensation of arbitrators.
- 658. District courts that may authorize arbitration.

§ 651. Authorization of arbitration

(a) Authority of certain district courts.—Each United States district court described in section 658 may authorize by local rule the use of arbitration in any civil action, including an adversary proceeding in bankruptcy. A district court described in section 658(1) may refer any such action to arbitration as set forth in section 652(a). A district court described in section 658(2) may refer only such actions to arbitration as are set forth in section 652(a)(1)(A).

(b) Title 9 not affected.—This chapter shall not affect title 9.

Added Pub.L. 100-702, Title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4659.

Historical and Revision Notes

Effective Date. Section 907 of Pub.L. 100-702 provided that: “This title and the amendments made by this title [enacting this chapter and the notes set out under this section and Section 652 of this title] shall take effect 180 days after the date of enactment of this Act. [Nov. 19, 1988].”

Model Procedures. Section 902 of Pub.L. 100-702 provides that:

“The Judicial Conference of the United States may develop model rules relating to procedures for arbitration under chapter 44, as added by section 901 of this Act [this chapter]. No model rule may supersede any provision of such chapter 44, this title [enacting this chapter and notes set out under this section and section 652 of this title], or any law of the United States.”

Reports. Section 903 of Pub.L. 100-702 provided that:

“(a) Annual Report by Director of Administrative Office of the United States Courts.—The Director of the Administrative Office of the United States Courts shall include in the annual report of the activities of the Administrative Office required under section 604(a)(3), statistical information about the implementation of chapter 44, as added by section 901 of this Act [this chapter].

“(b) Report by Federal Judicial Center.—Not later than 5 years after the date of enactment of this Act [Nov. 19, 1988], the Federal Judicial Center, in consultation with the Director of the Administrative Office of

the United States Courts, shall submit to the Congress a report on the implementation of chapter 44, as added by section 901 of this Act, which shall include the following:

“(1) A description of the arbitration programs authorized by such chapter, as conceived and as implemented in the judicial districts in which such programs are authorized.

“(2) A determination of the level of satisfaction with the arbitration programs in those judicial districts by a sampling of court personnel, attorneys, and litigants whose cases have been referred to arbitration.

“(3) A summary of those program features that can be identified as being related to program acceptance both within and across judicial districts.

“(4) A description of the levels of satisfaction relative to the cost per hearing of each program.

“(5) Recommendations to the Congress on whether to terminate or continue chapter 44, or, alternatively, to enact an arbitration provision in title 28, United States Code, authorizing arbitration in all Federal district courts.”

Effect on Judicial Rule Making Powers. Section 904 of Pub.L. 100-702 provided that:

“Nothing in this title [enacting this chapter and notes set out under this section and section 652 of this title] or in chapter 44, as added by section 901 of this Act [this chap-

ter], is intended to abridge, modify, or enlarge the rule making powers of the Federal judiciary.”

Authorization of Appropriations. Section 905 of Pub.L. 100-702 provided that:

“There are authorized to be appropriated for the fiscal year ending September 30, 1989, and for each of the succeeding 4 fiscal years, to the judicial branch such sums as may be necessary to carry out the purposes of chapter 44, as added by section 901 of this Act [this chapter]. Funds appropriated under this section shall be allocated by the Administrative Office of the United States Courts to Federal judicial districts and the Federal Judicial Center. The funds so appropriated are authorized to remain available until expended, except that such funds may not be expended for the arbitration of actions referred to arbitration after the date of repeal set forth in section 906 of this Act [set out as a note under this section]”.

Repeal. Section 906 of Pub.L. 100-702 provided that: “Effective 5 years after the date of the enactment of this Act [Nov. 19, 1988], chapter 44, as added by section 901 of this Act [this chapter], and the item relating to that chapter in the table of chapters at the beginning of part III of such title [preceding section 601 of this title], are repealed, except that the provisions of that chapter shall continue to apply through final disposition of all actions in which referral to arbitration was made before the date of repeal.”

Library References:

C.J.S. Arbitration §§ 2 et seq.; Bankruptcy § 205.

West's Key No. Digests, Arbitration Ⓒ1 et seq.; Bankruptcy Ⓒ3031.

§ 652. Jurisdiction

(a) Actions that may be referred to arbitration.—(1) Notwithstanding any provision of law to the contrary and except as provided in subsections (b) and (c) of this section, and section 901(c) of the Judicial Improvements and Access to Justice Act, a district court that authorizes arbitration under section 651 may—

(A) allow the referral to arbitration of any civil action (including any adversary proceeding in bankruptcy) pending before it if the parties consent to arbitration, and

(B) require the referral to arbitration of any civil action pending before it if the relief sought consists only of money damages not in excess of \$100,000 or such lesser amount as the district court may set, exclusive of interest and costs.

(2) For purposes of paragraph (1)(B), a district court may presume damages are not in excess of \$100,000 unless counsel certifies that damages exceed such amount.

(b) Actions that may not be referred without consent of parties.—Referral to arbitration under subsection (a)(1)(B) may not be made—

(1) of an action based on an alleged violation of a right secured by the Constitution of the United States, or

(2) if jurisdiction is based in whole or in part on section 1343 of this title.

(c) Exceptions from arbitration.—Each district court shall establish by local rule procedures for exempting, sua sponte or on motion of a party, any case from arbitration in which the objectives of arbitration would not be realized—

(1) because the case involves complex or novel legal issues,

(2) because legal issues predominate over factual issues, or

(3) for other good cause.

(d) Safeguards in consent cases.—In any civil action in which arbitration by consent is allowed under subsection (a)(1)(A), the district court shall by local rule establish procedures to ensure that—

(1) consent to arbitration is freely and knowingly obtained, and

(2) no party or attorney is prejudiced for refusing to participate in arbitration.

Added Pub.L. 100-702, Title IX, § 901(a), Nov. 19, 1988, 102 Stat. 6459.

Historical and Revision Notes

References in Text. Section 901(c) of the Judicial Improvements and Access to Justice Act, referred to in subsec. (a), is set out as a note below.

Exception to Limitation on Money Damages. Section 901(c) of Pub.L. 100-702 provided that: “Notwithstanding section 652 (as added by subsection (a) of this section) [this section], establishing a limitation of \$100,000

in money damages with respect to cases referred to arbitration, a district court listed in section 658 (as added by subsection (a) of this section) [section 658 of this title], whose local rule on the date of the enactment of this Act [Nov. 19, 1988] provides for a limitation on money damages, with respect to such cases, of not more than \$150,000, may continue to apply the higher limitation.”

Library References:

C.J.S. Arbitration §§ 2 et seq.; Bankruptcy § 205.

West's Key No. Digests, Arbitration Ⓒ1 et seq.; Bankruptcy Ⓒ3031.

§ 653. Powers of arbitrator; arbitration hearing

(a) Powers.—An arbitrator to whom an action is referred under section 652 shall have, within the judicial district of the district court which referred the action to arbitration, the power—

(1) to conduct arbitration hearings,

(2) to administer oaths and affirmations, and

(3) to make awards.

(b) Time for beginning arbitration hearing.—An arbitration hearing under this chapter shall begin within a time period specified by the district court,

but in no event later than 180 days after the filing of an answer, except that the arbitration proceeding shall not, in the absence of the consent of the parties, commence until 30 days after the disposition by the district court of any motion to dismiss the complaint, motion for judgment on the pleadings, motion to join necessary parties, or motion for summary judgment, if the motion was filed during a time period specified by the district court. The 180-day and 30-day periods specified in the preceding sentence may be modified by the court for good cause shown.

(c) Subpoenas.—Rule 45 of the Federal Rules of Civil Procedure (relating to subpoenas) applies to subpoenas for the attendance of witnesses and the production of documentary evidence at an arbitration hearing under this chapter. Added Pub.L. 100–702, Title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4660.

Library References:

C.J.S. Arbitration §§ 68 et seq.
West's Key No. Digests, Arbitration ⇨29.1–35.

§ 654. Arbitration award and judgment

(a) Filing and effect of arbitration award.—An arbitration award made by an arbitrator under this chapter, along with proof of service of such award on the other party by the prevailing party or by the plaintiff, shall, promptly after the arbitration hearing is concluded, be filed with the clerk of the district court that referred the case to arbitration. Such award shall be entered as the judgment of the court after the time has expired for requesting a trial de novo under section 655. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

(b) Sealing of arbitration award.—The district court shall provide by local rule that the contents of any arbitration award made under this chapter shall not be made known to any judge who might be assigned to the case—

(1) except as necessary for the court to determine whether to assess costs or attorney fees under section 655,

(2) until the district court has entered final judgment in the action or the action has been otherwise terminated, or

(3) except for purposes of preparing the report required by section 903(b) of the Judicial Improvements and Access to Justice Act.

(c) Taxation of costs.—The district court may by rule allow for the inclusion of costs as provided in section 1920 of this title as a part of the arbitration award.

Added Pub.L. 100–702, Title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4660.

Library References:

C.J.S. Arbitration §§ 68 et seq., 110 et seq.
West's Key No. Digests, Arbitration ⇨29.1–35, 48–89.

§ 655. Trial de novo

(a) Time for demand.—Within 30 days after the filing of an arbitration award with a district court under section 654, any party may file a written demand for a trial de novo in the district court.

(b) Restoration to court docket.—Upon a demand for a trial de novo, the action shall be restored to the docket of the court and treated for all purposes as if it had not been referred to arbitration. In such a case, any right of trial by jury that a party otherwise would have had, as well as any place on the court calendar which is no later than that which a party otherwise would have had, are preserved.

(c) Limitation on admission of evidence.—The court shall not admit at the trial de novo any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, unless—

(1) the evidence would otherwise be admissible in the court under the Federal Rules of Evidence, or

(2) the parties have otherwise stipulated.

(d) Taxation of arbitrator fees as cost.—(1)(A) A district court may provide by rule that, in any trial de novo under this section, arbitrator fees paid under section 657 may be taxed as costs against the party demanding the trial de novo.

(B) Such rule may provide that a party demanding a trial de novo under subsection (a), other than the United States or its agencies or officers, shall deposit a sum equal to such arbitrator fees as advanced payment of such costs, unless the party is permitted to proceed in forma pauperis.

(2) Arbitrator fees shall not be taxed as costs under paragraph (1)(A), and any sum deposited under paragraph (1)(B) shall be returned to the party demanding the trial de novo, if—

(A) the party demanding the trial de novo obtains a final judgment more favorable than the arbitration award, or

(B) the court determines that the demand for the trial de novo was made for good cause.

(3) Any arbitrator fees taxed as costs under paragraph (1)(A), and any sum deposited under paragraph (1)(B) that is not returned to the party demanding the trial de novo, shall be paid to the Treasury of the United States.

(4) Any rule under this subsection shall provide that no penalty for demanding a trial de novo, other than that provided in this subsection, shall be assessed by the court.

(e) Assessment of costs and attorney fees.—In any trial de novo demanded under subsection (a) in which arbitration was done by consent of the parties, a district court may assess costs, as provided in section 1920 of this title, and reasonable attorney fees against the party demanding the trial de novo if—

(1) such party fails to obtain a judgment, exclusive of interest and costs, in the court which is substantially more favorable to such party than the arbitration award, and

(2) the court determines that the party's conduct in seeking a trial de novo was in bad faith.

Added Pub.L. 100-702, Title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4661.

Library References:

C.J.S. Arbitration §§ 161 et seq.
West's Key No. Digests, Arbitration ⇨73.1-73.9.

§ 656. Certification of arbitrators

(a) Standards for certification.—Each district court listed in section 658 shall establish standards for the certification of arbitrators and shall certify arbitrators to perform services in accordance with such standards and this chapter. The standards shall include provisions requiring that any arbitrator—

- (1) shall take the oath or affirmation described in section 453, and
- (2) shall be subject to the disqualification rules of section 455.

(b) Treatment of arbitrator as independent contractor and special government employee.—An arbitrator is an independent contractor and is subject to the provisions of sections 201 through 211 of title 18 to the same extent as such provisions apply to a special Government employee of the executive branch. A person may not be barred from the practice of law because such person is an arbitrator.

Added Pub.L. 100-702, Title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4662.

Library References:

C.J.S. Arbitration §§ 68 et seq.
West's Key No. Digests, Arbitration ⇨29.1-30.

§ 657. Compensation of arbitrators

(a) Compensation.—The district court may, subject to limits set by the Judicial Conference of the United States, establish and pay the amount of compensation, if any, that each arbitrator shall receive for services rendered in each case.

(b) Transportation allowances.—Under regulations prescribed by the Director of the Administrative Office of the United States Courts, a district court may reimburse arbitrators for actual transportation expenses necessarily incurred in the performance of duties under this chapter.

Added Pub.L. 100-702, Title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4662.

Library References:

C.J.S. Arbitration §§ 75.
West's Key No. Digests, Arbitration ⇨41.

§ 658. District courts that may authorize arbitration

The district courts for the following judicial districts may authorize the use of arbitration under this chapter:

- (1) Northern District of California, Middle District of Florida, Western District of Michigan, Western District of Missouri, District of New Jersey, Eastern District of New York, Middle District of North Carolina, Western District of Oklahoma, Eastern District of Pennsylvania, and Western District of Texas.
- (2) Ten additional judicial districts, which shall be approved by the Judicial Conference of the United States. The Judicial Conference shall give

notice of the 10 districts approved under this paragraph to the Federal Judicial Center and to the public.

Added Pub.L. 100-702, Title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4663.

Library References:

C.J.S. Arbitration §§ 2 et seq.; Bankruptcy § 205.

West's Key No. Digests, Arbitration Ⓒ1 et seq.; Bankruptcy Ⓒ3031.

CHAPTER 57—GENERAL PROVISIONS APPLICABLE TO COURT OFFICERS AND EMPLOYEES

§ 959. Trustees and receivers suable; management; State laws

(a) Trustees, receivers or managers of any property, including debtors in possession, may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property. Such actions shall be subject to the general equity power of such court so far as the same may be necessary to the ends of justice, but this shall not deprive a litigant of his right to trial by jury.

(b) Except as provided in section 1166 of title 11, a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

June 25, 1948, c. 646, 62 Stat. 926; Nov. 6, 1978, Pub.L. 95-598, Title II, § 235, 92 Stat. 2667.

Library References:

C.J.S. Bankruptcy §§ 27, 67, 191 et seq., 374 et seq.; Receivers §§ 145 et seq., 321 et seq.;

Trusts §§ 246 et seq., 295 et seq., 357 et seq.

West's Key No. Digests, Bankruptcy Ⓒ2153, 2395, 3008.1-3011, 3022, 3622, 3627, 3672, 3703; Receivers Ⓒ110-116, 164, 166, 168, 170, 173-174(5); Trusts Ⓒ171-269.

PART IV—JURISDICTION AND VENUE

CHAPTER 85—DISTRICT COURTS; JURISDICTION

§ 1334. Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under this subsection (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. This subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate.

June 25, 1948, c. 646, 62 Stat. 931; July 10, 1984, Pub.L. 98-353, Title I, § 101(a), 98 Stat. 333; Oct. 27, 1986, Pub.L. 99-554, Title I, § 144(e), 100 Stat. 3096; Dec. 1, 1990, Pub.L. 101-650, Title III, § 309(b), 104 Stat. 5113; Pub.L. 103-394, Title I, § 104(b), October 22, 1994, 108 Stat. 4109.

Historical and Revision Notes

Codification. Section 238 of Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2667, amended this section to read as follows:

“§ 1334. Bankruptcy appeals

“(a) The district courts for districts for which panels have not been ordered appointed under section 160 of this title shall have jurisdiction of appeals from all final judgments, orders, and decrees of bankruptcy courts.

“(b) The district courts for such districts shall have jurisdiction of appeals from interlocutory orders and decrees of bankruptcy courts, but only by leave of the district court to which the appeal is taken.

“(c) A district court may not refer an appeal under that section to a magistrate or to a special master.”

Section 113 of Pub.L. 98-353, July 10, 1984, 98 Stat. 343, (effective June 27, 1984 pursuant to section 122(c) of Pub.L. 98-353) provided that this amendment “shall not be effective”. Section 121 of Pub.L. 98-353 (effective on July 10, 1984 pursuant to section 122(a) of Pub.L. 98-353) provided that this amendment shall take effect on July 10, 1984.

1994 Act. Subsection (d) is modified so as to allow the full appeal of certain bankruptcy court refusals to abstain in State law legal proceedings. The amendment operates prospectively and applies only to cases filed after the effective date of the 1994 Act. Accordingly, it does not make any existing orders appealable. Any future decisions not to abstain, if made in cases filed before the effective date of the Act, would also be governed by present law and thus would not be appealable to the Circuit Court of Appeals.

Effective Date of 1994 Amendments. Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: “(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994].”

Effective Date of 1986 Amendment. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554, set out as a note under section 581 of this title.

Effective Date of 1984 Amendments. For effective date of amendments by Title I of Pub.L. 98-353, see section 122 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 346, set out

as an Effective Date of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.

Jurisdiction Over and Transfer of Bankruptcy Cases and Proceedings. Section 115 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 343, provided that:

“(a) On the date of the enactment of this Act [July 10, 1984] the appropriate district court of the United States shall have jurisdiction of—

“(1) cases, and matters and proceedings in cases, under the Bankruptcy Act [former Title 11, Bankruptcy] that are pending immediately before such date in the bankruptcy courts continued by section 404(a) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2687) [Pub.L. 95-598, Title IV, § 404(a), Nov. 6, 1978, 92 Stat. 2683, set out in Transition Provisions] and

“(2) cases under title 11 of the United States Code [Title 11, Bankruptcy], and proceedings arising under title 11 of the United

States Code or arising in or related to cases under title 11 of the United States Code, that are pending immediately before such date in the bankruptcy courts continued by section 404(a) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2687).

“(b) On the date of the enactment of this Act [July 10, 1984], there shall be transferred to the appropriate district court of the United States appeals from final judgments, orders, and decrees of the bankruptcy courts pending immediately before such date in the bankruptcy appellate panels appointed under section 405(c) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2685) [Pub.L. 95-598, Title IV, § 405(c), Nov. 6, 1978, 92 Stat. 2685, set out in Transition Provisions].”

[For effective date of amendments by Title I of Pub.L. 98-353, see section 122 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 346, set out as an Effective Date of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.]

Library References:

C.J.S. Bankruptcy §§ 5 et seq.; Federal Courts §§ 10:1 et seq., 308 et seq.
West's Key No. Digests, Bankruptcy ⇨2041.1-2063; Federal Courts ⇨41-65, 973.

CHAPTER 87—DISTRICT COURTS; VENUE

Sec.

- 1408. Venue of cases under Title 11.
- 1409. Venue of proceedings arising under Title 11 or arising in or related to cases under Title 11.
- 1410. Venue of cases ancillary to foreign proceedings.
- 1411. Jury trials.
- 1412. Change of venue.

Historical and Revision Notes

Codification. Section 240(b) of Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2668, amended the table of sections by inserting the following item:

1408. Bankruptcy appeals.

Section 113 of Pub.L. 98-353, July 10, 1984, 98 Stat. 343, (effective June 27, 1984 pursuant to section 122(c) of Pub.L. 98-353) provided that this amendment “shall not be effective”. Section 121 of Pub.L. 98-353 (effective on July 10, 1984 pursuant to section 122(a) of Pub.L.

98-353) provided that this amendment shall take effect on July 10, 1984.

Effective Date of 1984 Amendments.

Section 102(b) of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 335, added items 1408 to 1412. For effective date of amendments by Title I of Pub.L. 98-353, see section 122 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 346, set out as an Effective Date of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.

§ 1408. Venue of cases under Title 11

Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district—

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

Added Pub.L. 98-353, Title I, § 102(a), July 10, 1984, 98 Stat. 334.

Historical and Revision Notes

Codification. Section 240(a) of Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2668, amended this section to read as follows:

“§ 1408. Bankruptcy appeals

“An appeal under section 1334 of this title from a judgment, order, or decree of a bankruptcy court may be brought only in the judicial district in which such bankruptcy court is located.”

Section 113 of Pub.L. 98-353, July 10, 1984, 98 Stat. 343, (effective June 27, 1984 pursuant

to section 122(c) of Pub.L. 98-353) provided that this amendment “shall not be effective”. Section 121 of Pub.L. 98-353 (effective on July 10, 1984 pursuant to section 122(a) of Pub.L. 98-353) provided that this amendment shall take effect on July 10, 1984.

Effective Date. For effective date of amendments by Title I of Pub.L. 98-353, see section 122 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 346, set out as an Effective Date of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy §§ 14 et seq.; Federal Courts §§ 16 et seq., 165 et seq.

West's Key No. Digests, Bankruptcy ⇨2058.1, 2059, 2081, 2082; Federal Courts ⇨71-157.

§ 1409. Venue of proceedings arising under Title 11 or arising in or related to cases under Title 11

(a) Except as otherwise provided in subsections (b) and (d), a proceeding arising under title 11 or arising in or related to a case under title 11 may be commenced in the district court in which such case is pending.

(b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case to recover a money judgment of or property worth less than \$1,000 or a consumer debt of less than \$5,000 only in the district court for the district in which the defendant resides.

(c) Except as provided in subsection (b) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case as statutory successor to the debtor or creditors under section 541 or 544(b) of title 11 in the district court for the district where the State or Federal court sits in

which, under applicable nonbankruptcy venue provisions, the debtor or creditors, as the case may be, may have commenced an action on which such proceeding is based if the case under title 11 had not been commenced.

(d) A trustee may commence a proceeding arising under title 11 or arising in or related to a case under title 11 based on a claim arising after the commencement of such case from the operation of the business of the debtor only in the district court for the district where a State or Federal court sits in which, under applicable nonbankruptcy venue provisions, an action on such claim may have been brought.

(e) A proceeding arising under title 11 or arising in or related to a case under title 11, based on a claim arising after the commencement of such case from the operation of the business of the debtor, may be commenced against the representative of the estate in such case in the district court for the district where the State or Federal court sits in which the party commencing such proceeding may, under applicable nonbankruptcy venue provisions, have brought an action on such claim, or in the district court in which such case is pending.

Added Pub.L. 98-353, Title I, § 102a, July 10, 1984, 98 Stat. 334.

Historical and Revision Notes

Effective Date. For effective date of 1984, 98 Stat. 346, set out as an Effective Date amendments by Title I of Pub.L. 98-353, see of 1984 Amendment note under section 151 of section 122 of Pub.L. 98-353, Title I, July 10, Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy §§ 14 et seq.; Federal Courts §§ 16 et seq., 165 et seq.

West's Key No. Digests, Bankruptcy ⇨2058.1, 2059, 2081, 2082; Federal Courts ⇨71-157.

§ 1410. Venue of cases ancillary to foreign proceedings

(a) A case under section 304 of title 11 to enjoin the commencement or continuation of an action or proceeding in a State or Federal court, or the enforcement of a judgment, may be commenced only in the district court for the district where the State or Federal court sits in which is pending the action or proceeding against which the injunction is sought.

(b) A case under section 304 of title 11 to enjoin the enforcement of a lien against a property, or to require the turnover of property of an estate, may be commenced only in the district court for the district in which such property is found.

(c) A case under section 304 of title 11, other than a case specified in subsection (a) or (b) of this section, may be commenced only in the district court for the district in which is located the principal place of business in the United States, or the principal assets in the United States, of the estate that is the subject of such case.

Added Pub.L. 98-353, Title I, § 102(a), July 10, 1984, 98 Stat. 335.

Historical and Revision Notes

Effective Date. For effective date of amendments by Title I of Pub.L. 98-353, see section 122 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 346, set out as an Effective Date of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy §§ 14 et seq.; Federal Courts §§ 16 et seq., 165 et seq.
West's Key No. Digests, Bankruptcy Ⓒ2058.1, 2059, 2081, 2082, 2341; Federal Courts Ⓒ71-157.

§ 1411. Jury trials

(a) Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim.

(b) The district court may order the issues arising under section 303 of title 11 to be tried without a jury.

Added Pub.L. 98-353, Title I, § 102(a), July 10, 1984, 98 Stat. 335.

Library References:

C.J.S. Bankruptcy § 34; Juries §§ 9 et seq., 69 et seq., 114 et seq.
West's Key No. Digests, Bankruptcy Ⓒ2130; Jury Ⓒ9-37.

Historical and Revision Notes

Effective Date. For effective date of amendments by Title I of Pub.L. 98-353, see section 122 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 346, set out as an Effective Date of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.

§ 1412. Change of venue

A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.

Added Pub.L. 98-353, Title I, § 102(a), July 10, 1984, 98 Stat. 335.

Historical and Revision Notes

Effective Date. For effective date of amendments by Title I of Pub.L. 98-353, see section 122 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 346, set out as an Effective Date of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy §§ 23 et seq.; Federal Civil Procedure §§ 495 et seq.
West's Key No. Digests, Bankruptcy Ⓒ2083 et seq.; Federal Courts Ⓒ101-157.

CHAPTER 89—DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS

§ 1452. Removal of claims related to bankruptcy cases

(a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

Added Pub.L. 98-353, Title I, § 103(a), July 10, 1984, 98 Stat. 335 and amended Pub.L. 101-650, Title III, § 309(c), Dec. 1, 1990, 104 Stat. 5113.

Historical and Revision Notes

Effective Date. For effective date of amendments by Title I of Pub.L. 98-353, see section 122 of Pub.L. 98-353, Title I, July 10, 1984, 98 Stat. 346, set out as an Effective Date of 1984 Amendment note under section 151 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy §§ 23-25.
West's Key No. Digests, Bankruptcy ⋄2086.1-2091.

PART V—PROCEDURE

CHAPTER 123—FEES AND COSTS

Note: See also “Judicial Conference Schedule of Fees” following § 1930 below

§ 1930. Bankruptcy fees

(a) Notwithstanding section 1915 of this title, the parties commencing a case under title 11 shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, the following filing fees:

(1) For a case commenced under chapter 7 or 13 of title 11, \$155.

(2) For a case commenced under chapter 9 of title 11, equal to the fee specified in paragraph (3) for filing a case under chapter 11 of title 11. The amount by which the fee payable under this paragraph exceeds \$300 shall be deposited in the fund established under section 1931 of this title.

(3) For a case commenced under chapter 11 of title 11 that does not concern a railroad, as defined in section 101 of title 11, \$800.

(4) For a case commenced under chapter 11 of title 11 concerning a railroad, as so defined, \$1,000.

(5) For a case commenced under chapter 12 of title 11, \$200.

(6) In addition to the filing fee paid to the clerk, a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until the case is converted or dismissed, whichever occurs first. The fee shall be \$250 for each quarter in which disbursements total less than \$15,000; \$500 for each quarter in which disbursements total \$15,000 or more but less than \$75,000; \$750 for each quarter in which disbursements total \$75,000 or more but less than \$150,000; \$1,250 for each quarter in which disbursements total \$150,000 or more but less than \$225,000; \$1,500 for each quarter in which disbursements total \$225,000 or more but less than \$300,000; \$3,750 for each quarter in which disbursements total \$300,000 or more but less than \$1,000,000; \$5,000 for each quarter in which disbursements total \$1,000,000 or more but less than \$2,000,000; \$7,500 for each quarter in which disbursements total \$2,000,000 or more but less than \$3,000,000; \$8,000 for each quarter in which disbursements total \$3,000,000 or more but less than \$5,000,000; \$10,000 for each quarter in which disbursements total \$5,000,000 or more. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.

(7) In districts that are not part of a United States trustee region as defined in section 581 of this title, the Judicial Conference of the United States may require the debtor in a case under chapter 11 of title 11 to pay fees equal to those imposed by paragraph (6) of this subsection. Such fees shall be deposited as offsetting receipts to the fund established under section 1931 of this title and shall remain available until expended.

An individual commencing a voluntary case or a joint case under title 11 may pay such fee in installments. For converting, on request of the debtor, a case under chapter 7, or 13 of title 11, to a case under chapter 11 of title 11, the debtor shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, a fee of the amount equal to the difference between the fee specified in paragraph (3) and the fee specified in paragraph (1).

(b) The Judicial Conference of the United States may prescribe additional fees in cases under title 11 of the same kind as the Judicial Conference prescribes under section 1914(b) of this title.

(c) Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or a writ of certiorari \$5 shall be paid to the clerk of the court, by the appellant or petitioner.

(d) Whenever any case or proceeding is dismissed in any bankruptcy court for want of jurisdiction, such court may order the payment of just costs.

(e) The clerk of the court may collect only the fees prescribed under this section.

(Added Pub.L. 95-598, Title II, § 246(a), Nov. 6, 1978, 92 Stat. 2671, and amended Pub.L. 98-353, Title I, § 111(a), (b), July 10, 1984, 98 Stat. 342; Pub.L. 99-500, Title I, § 101(b) [Title IV, § 407(b)], Oct. 18, 1986, 100 Stat. 1783-64;

Pub.L. 99-554, Title I, §§ 117, 144(f), Oct. 27, 1986, 100 Stat. 3095, 3097; Pub.L. 99-591, Title I, § 101(b) [Title IV, § 407(b)], Oct. 30, 1986, 100 Stat. 3341-64; Pub.L. 101-162, Title IV, § 406(a), Nov. 21, 1989, 103 Stat. 1016; Pub.L. 102-140, Title I, § 111(a), Oct. 28, 1991, 105 Stat. 795; Pub.L. 103-121, Title I, § 111(a)(1), (b)(1), Oct. 27, 1993, 107 Stat. 1164; Pub.L. 104-91, Title I, § 101(a), Jan. 6, 1996, 110 Stat. 11, as amended Pub.L. 104-99, Title II, § 211, Jan. 26, 1996, 110 Stat. 37; Pub.L. 104-208, Div. A, Title I, § 101(a) [Title I, § 109(a)], Sept. 30, 1996, 110 Stat. 3009-18; Pub.L. 106-113, Div. B, § 1000(a)(1) [Title I, § 113], Nov. 29, 1999, 113 Stat. 1535, 1501A-20; Pub.L. 106-518, Title I, §§ 103 to 105, Nov. 13, 2000, 114 Stat. 2411.)

Historical and Revision Notes

Codifications. Pub.L. 99-591 is a corrected version of Pub.L. 99-500.

Section 101(a) of Pub.L. 104-91, as amended by section 211 of Pub.L. 104-99, provided in part that section 111(a) of the General Provisions for the Department of Justice in Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (H.R. 2076) as passed by the House of Representatives on Dec. 6, 1995, was enacted into permanent law. Such section 111(a) of H.R. 2076 amended subsec. (a)(6) of this section. See 1996 Amendments note set out under this section.

Amendments

2000 Amendments. Subsec. (a). Pub.L. 106-518, § 104, in the undesignated portion at the end, struck out “\$400” and inserted “the amount equal to the difference between the fee specified in paragraph (3) and the fee specified in paragraph (1)”.

Subsec. (a)(2). Pub.L. 106-518, § 103, struck out “\$300” and inserted “equal to the fee specified in paragraph (3) for filing a case under chapter 11 of title 11. The amount by which the fee payable under this paragraph exceeds \$300 shall be deposited in the fund established under section 1931 of this title”.

Subsec. (a)(7). Pub.L. 106-518, § 105, added par. (7).

1999 Amendments. Subsec. (a)(1). The fee amount was increased from \$130 to \$155 effective December 29, 1999, by Public Law No. 106-113, signed by President Clinton on November 29, 1999.

1996 Amendments. Subsec. (a)(3). Pub.L. 104-208, § 101(a) [s 109(a)], inserted a dollar sign preceding “800”.

Subsec. (a)(6). Pub.L. 104-208, § 101(a) [s 109(a)], substituted provisions setting quarter-

ly fees at \$500 for disbursements between \$15,000 and \$75,000, \$750 for those between \$75,000 and \$150,000, \$1,250 for those between \$150,000 and \$225,000, \$1,500 for those between \$225,000 and \$300,000, \$3,750 for those between \$300,000 and \$1,000,000, \$5,000 for those between \$1,000,000 and \$2,000,000, \$7,500 for those between \$2,000,000 and \$3,000,000, \$8,000 for those between \$3,000,000 and \$5,000,000, and \$10,000 for those over \$5,000,000 for provisions setting quarterly fees at \$500 for disbursements between \$15,000 and \$150,000, \$1,250 for those between \$150,000 and \$300,000, \$3,750 for those between \$300,000 and \$3,000,000, and \$5,000 for those over \$3,000,000.

Pub.L. 104-91, § 101(a), as amended Pub.L. 104-99, § 211, struck out “a plan is confirmed or” preceding “the case is converted”. See Codifications note set out under this section.

1993 Amendments. Subsec. (a)(1). Pub.L. 103-121, § 111(a)(1), increased filing fee for chapter 7 or 13 cases from \$120 to \$130.

Subsec. (a)(3). Pub.L. 103-121, § 111(a)(1), increased filing fee for chapter 11 cases from \$600 to \$800.

1991 Amendments. Subsec. (a)(3). Pub.L. 102-140, § 111(a)(1), substituted “\$600” for “\$500”.

Subsec. (a)(6). Pub.L. 102-140, § 111(a)(2), substituted “\$250” for “\$150”, “\$500” for “\$300”, “\$1,250” for “\$750”, “\$3,750” for “\$2,250”, and “\$5,000” for “\$3,000”.

1989 Amendments. Subsec. (a)(1). Pub.L. 101-162, § 406(a), substituted “\$120” for “\$90”.

1986 Amendments. Subsec. (a). Pub.L. 99-554, § 117(5), in provision following numbered pars., inserted provision that for conversion, on request of the debtor, of a case under chapter 7

or 13 of title 11 to a case under chapter 11 of title 11, the debtor pay to the clerk of the court a fee of \$400.

Pub.L. 99-554, § 144(f), substituted “of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title” for “of the court” wherever appearing.

Subsec. (a)(1). Pub.L. 99-500 and Pub.L. 99-591, and Pub.L. 99-554, § 117(1), amended par. (1) identically, substituting “\$90” for “\$60”.

Subsec. (a)(3). Pub.L. 99-554, § 117(2), substituted “\$500” for “\$200”.

Subsec. (a)(4). Pub.L. 99-554, § 117(3), substituted “\$1,000” for “\$500”.

Subsec. (a)(5), (6). Pub.L. 99-554, § 117(4), added pars. (5) and (6).

1984 Amendments. Catchline. Pub.L. 98-353, § 111(b), substituted “fees” for “courts”.

Subsecs. (a), (c), (e). Pub.L. 98-353, § 111(a), substituted “clerk of the court” for “clerk of the bankruptcy court”.

Effective Dates

1993 Acts. Section 111(a) of Pub.L. 103-121 provided in part that amendment by section 111(a)(1) of Pub.L. 103-121, amending subsec. (a)(1) of this section, is effective 30 days after Oct. 27, 1993.

Section 111(b) of Pub.L. 103-121 provided in part that amendment by section 111(b)(1) of Pub.L. 103-121, amending subsec. (a)(3) of this section, is effective 30 days after Oct. 27, 1993.

1991 Acts. Amendment by Pub.L. 102-140 effective 60 days after the date of the enactment of Pub.L. 102-140, which was approved Oct. 28, 1991, see section 111(a) of Pub.L. 102-140.

1986 Acts. Amendment by Pub.L. 99-554 effective 30 days after Oct. 27, 1986, except as otherwise provided for, see section 302(a) of Pub.L. 99-554.

Amendment by Pub.L. 99-554, § 117(4), not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 270-day period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes

such district, whichever occurs first, see section 302(d)(1) of Pub.L. 99-554.

Amendment by Pub.L. 99-554, § 117(4), not to become effective in or with respect to certain specified judicial districts until, or apply to cases while pending in such district before, the expiration of the 2-year period beginning 30 days after Oct. 27, 1986, or of the 30-day period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, that includes such district, whichever occurs first, see section 302(d)(2) of Pub.L. 99-554.

Amendment by Pub.L. 99-554, § 117(4), not to become effective in or with respect to judicial districts established for the States of Alabama and North Carolina until, or apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, or Oct. 1, 2002, whichever occurs first, and, except as otherwise provided for, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district in the States of Alabama or North Carolina before any election made under section 302(d)(3)(A) of Pub.L. 99-554 by such district becomes effective or Oct. 1, 2002, whichever occurs first, amendments by Pub.L. 99-554 not to apply until Oct. 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first, and further, in any judicial district in Alabama or North Carolina not making the election described in section 302(d)(3)(A) of Pub.L. 99-554, any person appointed under regulations issued by the Judicial Conference to administer estates in cases under Title 11 authorized to establish, etc., a panel of private trustees, and to supervise cases and trustees in cases under chapters 7, 11, 12, and 13 of Title 11, until amendments by sections 201 to 231 of Pub.L. 99-554 effective in such district, see section 302(d)(3)(A) to (F), (H), (I) of Pub.L. 99-554.

Deposit in the general receipts of the Treasury of funds collected as a result of the amendments made by section 117 of Pub.L. 99-554 in a judicial district in the States of Alabama or North Carolina under section 1930(a) of Title 28 before the date the amendments made by sections 201 to 231 of Pub.L. 99-554 take effect in such districts, and not-

withstanding section 589a of Title 28, see section 302(d)(3)(G) of Pub.L. 99-554.

Amendment by Pub.L. 99-554, § 117(4), except as otherwise provided, with respect to cases under chapters 7, 11, 12, and 13 of Title 11 commenced before 30 days after Oct. 27, 1986, and pending in a judicial district referred to in section 581(a) of Title 28, as amended by section 111(a) of Pub.L. 99-554, for which a United States trustee is not authorized before 30 days after Oct. 27, 1986 to be appointed, not applicable until the expiration of the 3-year period beginning on Oct. 27, 1986, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of Pub.L. 99-554 the region specified in a paragraph of such section 581(a) that includes, such district, whichever occurs first, see section 302(e)(1), (2) of Pub.L. 99-554.

Rule of construction regarding fees for cases under Title 11 for any conduct or period occurring before section 1930(a)(6) of Title 28 becomes effective in the district in which such case is pending, see section 302(e)(3) of Pub.L. 99-554.

1984 Acts. Amendment by Pub.L. 98-353 effective July 10, 1984, see section 122(a) of Pub.L. 98-353.

1979 Acts. Section effective Oct. 1, 1979, see section 402(c) of Pub.L. 95-598.

Effective Dates of 1989 Amendments; Miscellaneous Fees. Section 406(a) of Pub.L. 101-162 provided in part that: "Pursuant to section 1930(b) of title 28 [subsec. (b) of this section] the Judicial Conference of the United States shall prescribe a fee of \$60 on motions seeking relief from the automatic stay under 11 U.S.C. section 362(b) [section 362(b) of Title 11, Bankruptcy] and motions to compel abandonment of property of the estate. The fees established pursuant to the preceding two sentences shall take effect 30 days after the enactment of this Act [Nov. 21, 1989]."

Accrual and Payment of Quarterly Fees in Chapter 11 Cases After Jan. 27, 1996; Confirmation Status of Plans. Section 101(a) of Pub.L. 104-91, as amended Pub.L. 104-99, Title II, § 211, Jan. 26, 1996, 110 Stat. 37; Pub.L. 104-208, Div. A, Title I, § 101(a) [Title I, § 109(d)], Sept. 30, 1996, 110 Stat. 3009-19, provided, in part: "That, notwithstanding any other provision of law, the fees under 28 U.S.C. 1930(a)(6) [subsec. (a)(6) of this section] shall accrue and be payable from and after January 27, 1996, in all cases (including, without limitation, any cases pending as of

that date), regardless of confirmation status of their plans."

Collection and Disposition of Fees in Bankruptcy Cases. Section 404(a) of Pub. L. 101-162 provided that: "For fiscal year 1990 and hereafter, such fees as shall be collected for the preparation and mailing of notices in bankruptcy cases as prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. 1930(b) [subsec. (b) of this section] shall be deposited to the 'Courts of Appeals, District Courts, and Other Judicial Services, Salaries and Expenses' appropriation to be used for salaries and other expenses incurred in providing these services."

Court Fees for Electronic Access to Information. Judicial Conference to prescribe reasonable fees for collection by courts under this section for access to information available through automatic data processing equipment and fees to be deposited in Judiciary Automation Fund, see section 303 of Pub.L. 102-140.

Issuance of Notices to Creditors and Other Interested Parties. Section 403 of Pub.L. 101-162 provided that: "Notwithstanding any other provision of law, for fiscal year 1990 and hereafter, (a) The Administrative Office of the United States Courts, or any other agency or instrumentality of the United States, is prohibited from restricting solely to staff of the Clerks of the United States Bankruptcy Courts the issuance of notices to creditors and other interested parties. (b) The Administrative Office shall permit and encourage the preparation and mailing of such notices to be performed by or at the expense of the debtors, trustees or such other interested parties as the Court may direct and approve. (c) The Director of the Administrative Office of the United States Courts shall make appropriate provisions for the use of and accounting for any postage required pursuant to such directives."

Report on Bankruptcy Fees. Section 111(d) of Pub.L. 103-121 provided that:

"(1) Report required.—Not later than March 31, 1998, the Judicial Conference of the United States shall submit to the Committees on the Judiciary of the House of Representatives and the Senate, a report relating to the bankruptcy fee system and the impact of such system on various participants in bankruptcy cases.

"(2) Contents of report.—Such report shall include—

“(A)(i) an estimate of the costs and benefits that would result from waiving bankruptcy fees payable by debtors who are individuals, and

“(ii) recommendations regarding various revenue sources to offset the net cost of waiving such fees; and

“(B)(i) an evaluation of the effects that would result in cases under chapters 11 and 13 of title 11, United States Code [sections 1101 et seq. and 1301 et seq., respectively, of Title 11, Bankruptcy], from using a graduated bankruptcy fee system based on assets, liabilities, or both of the debtor, and

“(ii) recommendations regarding various methods to implement such a graduated bankruptcy fee system.

“(3) Waiver of fees in selected districts.—For purposes of carrying out paragraphs (1) and (2), the Judicial Conference of the United States shall carry out in not more than six

judicial districts, throughout the 3-year period beginning on October 1, 1994, a program under which fees payable under section 1930 of title 28, United States Code [this section], may be waived in cases under chapter 7 of title 11, United States Code [section 701 et seq. of Title 11], for debtors who are individuals unable to pay such fees in installments.

“(4) Study of graduated fee system.—For purposes of carrying out paragraphs (1) and (2), the Judicial Conference of the United States shall carry out, in not fewer than six judicial districts, a study to estimate the results that would occur in cases under chapters 11 and 13 of title 11, United States Code [sections 1101 et seq. and 1301 et seq., respectively, of Title 11], if filing fees payable under section 1930 of title 28, United States Code [this section], were paid on a graduated scale based on assets, liabilities, or both of the debtor.”

JUDICIAL CONFERENCE SCHEDULE OF FEES

Bankruptcy Court Miscellaneous Fee Schedule

The Judicial Conference of the United States at its session on March 7–9, 1979, set forth the schedule of fees to be charged in bankruptcy courts pursuant to this section. That schedule became effective on October 1, 1979. At its sessions in March and September 1980, March, 1981, March, 1987, and March and September, 1988, the Judicial Conference amended the schedule of fees. The Administrative Office of the United States Courts provided for Registry Fund Fees effective June 12, 1989. At its September, 1989 meeting, the Judicial Conference again amended the schedule of fees, such amendments effective pursuant to 1989 Judicial Conference Statement. The schedule of fees was again amended by the Judicial Conference at its March, 1990 and September, 1990 meetings. At its 1991 meeting, the Judicial Conference amended the schedule of fees to be effective Feb. 3, 1992. At its March 1991 meeting the Judicial Conference adopted Item 23 to be effective Oct. 19, 1992, with later implementation. At its September, 1992 meeting the Judicial Conference amended Item 8 to be effective Dec. 1, 1992. At its March, 1993 meeting the Judicial Conference amended its fee schedule effective May 6, 1993. At its September, 1993 meeting the Judicial Conference amended its fee schedule to be effective November 8, 1993. At its 1994 meeting, the Judicial Conference amended its fee schedule to be effective January 1, 1995. At its September, 1995 meeting the Judicial Conference amended its fee schedule to be effective November 9, 1995, and at its 1996 meetings it adopted amendments to be effective April 1, 1996 and October 28, 1996. At its 1997 meeting the Judicial Conference amended its fee schedule to be effective January 1, 1998. At its 1999 meeting the Judicial Conference amended its fee schedule to be effective October 1, 1999. The Judicial Conference subsequently adopted amendments to its fee schedule effective February 1, 2001.

Following are fees to be charged for services to be performed by clerks of the bankruptcy courts. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in items 1, 5, and 23, or to bankruptcy administrators appointed under Public Law No. 99-554, § 302(d)(3)(I). No fees under this schedule shall be charged to federal agencies or

programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A.

(1) For reproducing any record or paper, \$.50 per page. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records. This fee shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access.

(2) For certification of any document or paper, whether the certification is made directly on the document or by separate instrument, \$7 . For exemplification of any document or paper, twice the amount of the charge for certification.

(3) For reproduction of magnetic tape recordings, either cassette or reel-to-reel, \$20 including the cost of materials.

(4) For amendments to a debtor's schedules of creditors or lists of creditors, \$20 for each amendment, provided the bankruptcy judge may, for good cause, waive the charge in any case.

(5) For every search of the records of the bankruptcy court conducted by the clerk of the bankruptcy court or a deputy clerk, \$20 per name or item searched. This fee shall apply to services rendered on behalf of the United States if the information requested is available through electronic access.

(6) For filing a complaint, a fee shall be collected in the same amount as the filing fee prescribed in 28 U.S.C. § 1914(a) for instituting any civil action other than a writ of habeas corpus. If the United States, other than a United States trustee acting as a trustee in a case under title 11, or a debtor is the plaintiff, no fee is required. If a trustee or debtor in possession is the plaintiff, the fee should be payable only from the estate and to the extent there is any estate realized. If a child support creditor or its representative is the plaintiff, and if such plaintiff files the form required by § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

(7) For filing or indexing any paper not in a case or proceeding for which a filing fee has been paid, including registering a judgment from another district, \$30.

(8) In all cases filed under Title 11, the clerk shall collect from the debtor or the petitioner a miscellaneous administrative fee of \$30. This fee may be paid in installments in the same manner that the filing fee may be paid in installments, consistent with the procedure set forth in Federal Rule of Bankruptcy Procedure 1006.

(9) Upon the filing of a petition under chapter 7 of the Bankruptcy Code, the petitioner shall pay \$15 to the clerk of the court for payment to trustees serving in cases as provided in 11 U.S.C. § 330(b)(2). An application to pay the fee in installments may be filed in the manner set forth in Federal Rule of Bankruptcy Procedure 1006(b).

(10) Upon the filing of a motion to convert a case to chapter 7 of the Bankruptcy Code, the movant shall pay \$15 to the clerk of court for payment to trustees serving in cases as provided in 11 U.S.C. § 330(b)(2). Upon the filing of a notice of conversion pursuant to section 1208(a) or section 1307(a) of the Code, \$15 shall be paid to the clerk of the court for payment to trustees serving in cases as provided in 11 U.S.C. § 330(b)(2). If the trustee serving in the case before the conversion is the movant, the fee shall be payable only from the estate that exists prior to conversion.

(11) For filing a motion to reopen a Bankruptcy Code case, a fee shall be collected in the same amount as the filing fee prescribed by 28 U.S.C. § 1930(a) for commencing a new case on the date of reopening, unless the reopening is to correct an administrative error or for actions related to the debtor's discharge. The court may waive this fee under appropriate circumstances or may defer payment of the fee from trustees pending discovery of additional assets.

(12) For each microfiche sheet of film or microfilm jacket copy of any court record, where available, \$4.

(13) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, \$25.

(14) For a check paid into the court which is returned for lack of funds, \$35.

(15) For docketing a proceeding on appeal or review from a final judgment of a bankruptcy judge pursuant to 28 U.S.C. § 158(a) and (b), the fee shall be the same amount as the fee for docketing a case on appeal or review to the appellate court as required by Item 1 of the Courts of Appeals Miscellaneous Fee Schedule. A separate fee shall be paid by each party filing a notice of appeal in the bankruptcy court, but parties filing a joint notice of appeal in the bankruptcy court are required to pay only one fee.

(16) For filing a petition ancillary to a foreign proceeding under 11 U.S.C. § 304, \$500.

(17) The court may charge and collect fees, commensurate with the cost of printing, for copies of the local rules of court. The court may also distribute copies of the local rules without charge.

(18) The clerk shall assess a charge for the handling of registry funds deposited with the court, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

(19) When a joint case filed under § 302 of title 11 is divided into two separate cases at the request of the debtor(s), a fee shall be charged equal to one-half the current filing fee for the chapter under which the joint case was commenced.

(20) For filing a motion to terminate, annul, modify, or condition the automatic stay provided under § 362(a) of title 11, a motion to compel abandonment of property of the estate pursuant to Rule 6007(b) of the Federal Rules of Bankruptcy Procedure, or a motion to withdraw the reference of a case or proceeding under 28 U.S.C. § 157(d), a fee shall be collected in the amount of one-half the filing fee prescribed in 28 U.S.C. § 1914(a) for instituting any civil action other than a writ of habeas corpus. If a child support creditor or its representative is the movant, and if such movant files the form required by § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

(21) For docketing a cross appeal from a bankruptcy court determination, the fee shall be the same amount as the fee for docketing a case on appeal or review to the appellate court as required by Item 1 of the Courts of Appeals Miscellaneous Fee Schedule.

(22) For usage of electronic access to court data: \$.60 per minute of usage via dial up service, and \$.07 per page for public users obtaining information through a federal judiciary Internet site [provided the court may, for good cause, exempt persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information]. All such fees collected shall be deposited to the Judiciary Information Technology Fund. These fees shall apply to

the United States. (The Judicial Conference has approved an advisory note clarifying the judiciary's policy with respect to exemptions from the fees for usage of electronic access to court data. This advisory note is attached to this Fee Schedule as Appendix I. The Conference has also approved an advisory note defining information that may be provided to the public at no cost. This advisory note is attached at Appendix II.)

APPENDIX I

The Judicial Conference has prescribed fees for electronic access to court data, as set forth above in the Miscellaneous Fee Schedule. The schedule provides that the court may exempt persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information. Exemptions should be granted as the exception, not the rule. The exemption language is intended to accommodate those users who might otherwise not have access to the information in this electronic form. It is not intended to provide a means by which a court would exempt all users.

Examples of persons and classes of persons who may be exempted from electronic public access fees include, but are not limited to: indigents; bankruptcy case trustees; not-for-profit organizations; and voluntary ADR neutrals.

APPENDIX II

a. The Judicial Conference has prescribed a fee for access to court data obtained electronically from the public records of individual cases in the court, including filed documents and the docket sheet, except as provided below.

b. Courts may provide other local court information at no cost. Examples of information which can be provided at no cost include: local rules, court forms, news items, court calendars, opinions designated by the court for publication, and other information—such as court hours, court location, telephone listings—determined locally to benefit the public and the court.

Language to Clarify Reopened Bankruptcy Code Cases.

Filing fees prescribed by 28 U.S.C. § 1930(a) must be collected when a Bankruptcy Code case is reopened, unless the reopening is to correct an administrative error or for actions related to the debtor's discharge. If a Bankruptcy Code case is reopened for any other purpose, the appropriate fee to be charged is the same as the filing fee in effect for commencing a new case on the date of reopening.

STATEMENT RESPECTING 1988 AMENDMENTS FROM ADMINISTRATIVE OFFICE OF UNITED STATES COURTS.

The Director of the Administrative Office of the United States Courts in a memorandum to the Chief Judges of the United States Courts of Appeals, United States District Courts, and United States Bankruptcy Courts, dated April 19, 1988, provided in part that: "The amendment establishing a fee for filing a petition ancillary to a foreign proceeding under § 304 of the Bankruptcy Code will become effective May 1, 1988. The amendment expanding the exemption for services rendered 'to the United States' to include services rendered to bankruptcy administrators simply expresses a policy which has been in effect since the creation of the bankruptcy administrator program by Congress in the Bankruptcy Judges, United States Trustees and Family Farmer Bankruptcy Act of 1986. [Pub.L. No. 99-554, § 302(d)(3)(I).]"

Statement from 1989 Meeting of Judicial Conference.

The Judicial Conference, at the September 20, 1989 meeting, provided in part that Item 21 takes effect on December 21, 1989. The Conference further provided that: "The remaining fees, Items 20 and 22, take effect on January 11, 1990, pending approval of the Appropriations Committees."

Registry Fund Fees—Item 19**(54 FR 20407, May 11, 1989)**

Effective June 12, 1989, a fee will be assessed for handling funds deposited in noncriminal proceedings with the court and held in interest bearing accounts or instruments pursuant to 28 U.S.C. § 2041 and Federal Rules of Civil Procedure rule 67. For new accounts, i.e., investments made on or after June 12, 1989, the fee will be equal to the first 45 days income earned on the deposit. Each subsequent deposit of new principal in the same case or proceeding will be subject to the fee. Reinvestment of prior deposits will not be subject to the fee. For existing accounts, i.e., investments held by the court prior to June 12, 1989, a fee will be assessed equal to the first 45 days of income earned beginning 30 days after June 12, 1989. Subsequent deposits of new principal in the same account will be subject to the fee. Subsequent reinvestment of existing deposits will not be subject to the fee.

The fee will apply only once to each sum deposited regardless of the length of time deposits are held and will not exceed income actually earned on the account.

The fee does not apply in the District Courts of Guam, Northern Mariana Islands, the Virgin Islands, the United States Claims Court, or other courts whose fees are not set under 28 U.S.C. § 1930.

Registry Fund Fees—Item 19**(55 F.R. 42867, October 24, 1990)**

Effective December 1, 1990, the registry fee assessment provisions were revised and converted from a one-time charge equal to all income earned in the first 45 days of the investment to a charge of 10 percent of the income earned while funds are held in the court registry. Additionally, the fee was extended to any funds placed in the court's registry and invested regardless of the nature of the action underlying the deposit.

The new method will not be applied on investments in cases from which a fee has been exacted based on the prior method (interest earned in the first 45 days the funds were invested or the first 45 days following July 12, 1989). The new method will also not be applied in cases where the investment instrument has a maturity date greater than one year, but where a fee under the prior method applies but has not been deducted.

The fee does not apply in the District Courts of Guam, the Northern Mariana Islands, the Virgin Islands, the United States Claims Court, or any other federal court whose fees are not set under 28 U.S.C. §§ 1913, 1914, and 1930.

Registry Fund Fees—Item 19**(56 F.R. 56356, November 4, 1991)**

Effective February 3, 1992, the registry fee assessment provisions are revised and converted from a charge equal to 10 percent of the income earned while funds are held in the court's registry to a variable rate based on the amount deposited with the court and, in certain cases, the length of time funds are held in the court's registry.

The revised fee will be a fee of 10 percent of the total income received during each income period from investments of less than \$100,000.000 of registry funds in income-

bearing accounts. On investments exceeding \$100,000,000 the 10 percent fee shall be reduced by one percent for each increment of \$50,000,000 over the initial \$100,000,000. For those deposits where funds are placed in the registry by court order for a time certain, for example, by the terms of an adjudicated trust, the fee will be further reduced. This further reduction will amount to 2.5 percent for each five-year interval or part thereof. The total minimum fee to be charged will be no less than two percent of the income on investments.

The following table sets out the fee schedule promulgated by this notice:

REGISTRY—SCHEDULE OF FEES				
[% of income earned]				
Amount of deposit *	0–5 yrs.	5–10 yrs.	10–14 yrs.	15 yrs.
less than 100M	10	7.5	5.0	2.5
100M–150M	9	6.5	4.0	2.0
150M–200M	8	5.5	3.0	2.0
200M–250M	7	4.5	2.0	2.0
250M–300M	6	3.5	2.0	2.0
300M–350M	5	2.5	2.0	2.0
350M–400M	4	2.0	2.0	2.0
400M–450M	3	2.0	2.0	2.0
over 450M	2	2.0	2.0	2.0

* Except where otherwise authorized by the Director, each deposit into any account is treated separately in determining the fee.

The new fee applies to all earnings applied to investments on and after the effective date of this change, except for earnings on investments in cases being administered under the provisions of the May 11, 1989 notice [54 FR 20407], i.e., to which the fee equal to the first 45 days income is applicable.

The fee, as modified herein, will continue to apply to any case where the court has authorized the investment of funds placed in its custody or held by it in trust in its registry regardless of the nature of the underlying action.

The fee does not apply in the District Court of Guam, the Northern Mariana Islands, the Virgin Islands, the United States Claims Court, or any other Federal court whose fees are not set under 28 U.S.C. §§ 1913, 1914, and 1930.

CHAPTER 131—RULES OF COURTS

§ 2075. Bankruptcy rules

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under Title 11.

Such rules shall not abridge, enlarge, or modify any substantive right.

The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under this section is to become effective a copy of the proposed rule. The rule shall take effect no earlier than December 1 of the year in which it is transmitted to Congress unless otherwise provided by law.

Added Pub.L. 88–623, § 1, Oct. 3, 1964, 78 Stat. 1001, and amended Pub.L. 95–598, Title II, § 247, Nov. 6, 1978, 92 Stat. 2672; Pub.L. 103–394, Title I, § 104(f), October 22, 1994, 108 Stat. 4110.

Historical and Revision Notes

Application of Certain Bankruptcy Rules; Rules Relating to this Chapter.

Applicability of rules prescribed under this section and in effect on Oct. 27, 1986, to cases filed under this chapter, except as otherwise provided, see section 305(b) of Pub.L. 99-554, set out as a note under section 581 of this title.

Dismissal of Liquidation Actions For Nonpayment of Fees and Charges. Pub.L. 98-353, Title III, § 320, July 10, 1984, 98 Stat. 357, provided that: "The Supreme Court shall prescribe general rules implementing the prac-

tice and procedure to be followed under section 707(b) of title 11, United States Code. Section 2075 of title 28, United States Code, shall apply with respect to the general rules prescribed under this section."

Effective Date of 1994 Amendments.

Section 702(a) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided: "(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [October 22, 1994]."

Library References:

C.J.S. Bankruptcy § 6.

West's Key No. Digests, Bankruptcy ☞2129.

RULES AND FORMS OF PRACTICE AND PROCEDURE IN BANKRUPTCY

As Amended to June 1, 2001

FEDERAL RULES OF BANKRUPTCY PROCEDURE

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Rule 1001

SCOPE OF RULES AND FORMS; SHORT TITLE

The Bankruptcy Rules and Forms govern procedure in cases under title 11 of the United States Code. The rules shall be cited as the Federal Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms. These rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Promulgation of bankruptcy rules by Supreme Court, see § 2075 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy § 6.
West's Key No. Digests, Bankruptcy ⇨2129.

Committee Note

Section 247 of Public Law 95-598, 92 Stat. 2549 amended 28 U.S.C. § 2075 by omitting the last sentence. The effect of the amendment is to require that procedural rules promulgated pursuant to 28 U.S.C. § 2075 be consistent with the bankruptcy statute, both titles 11 and 28 U.S.C. Thus, although Rule 1001 sets forth the scope of the bankruptcy rules and forms, any procedural matters contained in title 11 or 28 U.S.C. with respect to cases filed under 11 U.S.C. would control. See 1 Collier, *Bankruptcy* ¶ 3.04[2][c] (15th ed. 1980).

28 U.S.C. § 151 establishes a United States Bankruptcy Court in each district as an adjunct to the district court. This provision does not, however, become effective until April 1, 1984. Public Law 95-598, § 402(b). From October 1, 1979 through March 31, 1984, the courts of bankruptcy as defined in § 1(10) of the Bankruptcy Act, and created in § 2a of that Act continue to be the courts of bankruptcy. Public Law 95-598, § 404(a). From their effective date these rules and forms are to be applicable in cases filed under chapters 7, 9, 11 and 13 of title 11 regardless of whether the court is

established by the Bankruptcy Act or by 28 U.S.C. § 151. Rule 9001 contains a broad and general definition of “bankruptcy court,” “court” and “United States Bankruptcy Court” for this purpose.

“Bankruptcy Code” or “Code” as used in these rules means title 11 of the United States Code, the codification of the bankruptcy law. Public Law 95–598, § 101. See Rule 9001.

“Bankruptcy Act” as used in the notes to these rules means the Bankruptcy Act of 1898 as amended which was repealed by § 401(a) of Public Law 95–598.

These rules apply to all cases filed under the Code except as otherwise specifically stated.

The final sentence of the rule is derived from former Bankruptcy Rule 903. The objective of “expeditious and economical administration” of cases under the Code has frequently been recognized by the courts to be “a chief purpose of the bankruptcy laws.” See *Katchen v. Landy*, 382 U.S. 323, 328 (1966); *Bailey v. Glover*, 88 U.S. (21 Wall.) 342, 346–47. (1874); *Ex parte Christy*, 44 U.S. (3 How.) 292, 312–14, 320–22 (1845). The rule also incorporates the wholesome mandate of the last sentence of Rule 1 of the Federal Rules of Civil Procedure. 2 Moore, *Federal Practice* ¶ 1.13 (2d ed. 1980); 4 Wright & Miller, *Federal Practice and Procedure—Civil* § 1029 (1969).

Committee Note to 1987 Amendments

Title I of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub.L.No. 98–353, 98 Stat. 333 (hereinafter the 1984 amendments), created a new bankruptcy judicial system in which the role of the district court was substantially increased. 28 U.S.C. § 1334 confers on the United States district courts original and exclusive jurisdiction over all cases under title 11 of the United States Code and original but not exclusive jurisdiction over civil proceedings arising under title 11 and civil proceedings arising in or related to a case under title 11.

Pursuant to 28 U.S.C. § 157(a) the district court may but need not refer cases and proceedings within the district court’s jurisdiction to the bankruptcy judges for the district. Judgments or orders of the bankruptcy judges entered pursuant to 28 U.S.C. § 157(b)(1) and (c)(2) are subject to appellate review by the district courts or bankruptcy appellate panels under 28 U.S.C. § 158(a).

Rule 81(a)(1) F.R.Civ.P. provides that the civil rules do not apply to proceedings in bankruptcy, except as they may be made applicable by rules promulgated by the Supreme Court, *e.g.*, Part VII of these rules. This amended Bankruptcy Rule 1001 makes the Bankruptcy Rules applicable to cases and proceedings under title 11, whether before the district judges or the bankruptcy judges of the district.

Committee Note to 1991 Amendments

The citation to these rules is amended to conform to the citation form of the Federal Rules of Civil Procedure, Federal Rules of Appellate Procedure, and Federal Rules of Criminal Procedure.

PART I
COMMENCEMENT OF CASE; PROCEEDINGS
RELATING TO PETITION AND
ORDER FOR RELIEF

Rule

- 1002. Commencement of Case
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- 1011. Responsive Pleading or Motion in Involuntary and Ancillary Cases
- 1012. [Abrogated]
- 1013. Hearing and Disposition of a Petition in an Involuntary Case
- 1014. Dismissal and Change of Venue
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- 1017. Dismissal or Conversion of Case; Suspension
- 1018. Contested Involuntary Petitions; Contested Petitions Commencing Ancillary Cases; Proceedings to Vacate Order for Relief; Applicability of Rules in Part VII Governing Adversary Proceedings
- 1019. Conversion of Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to Chapter 7 Liquidation Case
- 1020. Election to be Considered a Small Business in a Chapter 11 Reorganization Case

Rule 1002

COMMENCEMENT OF CASE

(a) Petition. A petition commencing a case under the Code shall be filed with the clerk.

(b) Transmission to United States Trustee. The clerk shall forthwith transmit to the United States trustee a copy of the petition filed pursuant to subdivision (a) of this rule.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Commencement of voluntary cases, see § 301 of this title.

Debtors for whom relief available, see § 109 of this title.

Joint cases, see § 302 of this title.

Number of copies—

Involuntary petition, see rule 1003.

Schedules, statements, and lists, see rule 1007.

Signing and verification of petitions, see rules 1008, 9011.

Stay of acts and proceedings against debtor and estate property, see § 362 of this title.

Library References:

C.J.S. Bankruptcy §§ 37 et seq.

West's Key No. Digests, Bankruptcy ☞2202, 2251, 2257, 2311.

Official Forms

Original petition to mean petition filed under this rule for purposes of statement of financial affairs, see form 7.

Voluntary petition, see form 1.

Committee Note

Under §§ 301–303 of the Code, a voluntary or involuntary case is commenced by filing a petition with the bankruptcy court. The voluntary petition may request relief under chapter 7, 9, 11, or 13 whereas an involuntary petition may be filed only under chapter 7 or 11. Section 109 of the Code specifies the types of debtors for whom the different forms of relief are available and § 303(a) indicates the persons against whom involuntary petitions may be filed.

The rule in subdivision (a) is in harmony with the Code in that it requires the filing to be with the bankruptcy court.

The number of copies of the petition to be filed is specified in this rule but a local rule may require additional copies. This rule provides for filing sufficient copies for the court's files and for the trustee in a chapter 7 or 13 case.

Official Form No. 1 may be used to seek relief voluntarily under any of the chapters. Only the original need be signed and verified, but the copies must be conformed to the original. See Rules 1008 and 9011(c). As provided in § 362(a) of the Code, the filing of a petition acts as a stay of certain acts and proceedings against the debtor, property of the debtor, and property of the estate.

Committee Note to 1987 Amendments

Rules 1002(a), governing a voluntary petition, 1003(a), governing an involuntary petition, and 1003(e), governing a petition in a case ancillary to a foreign proceeding, are combined into this Rule 1002. If a bankruptcy clerk has been appointed for the district, the petition is filed with the bankruptcy clerk. Otherwise, the petition is filed with the clerk of the district court.

The elimination of the reference to the Official Forms of the petition is not intended to change the practice. Rule 9009 provides that the Official Forms “shall be observed and used” in cases and proceedings under the Code.

Subdivision (b) which provided for the distribution of copies of the petition to agencies of the United States has been deleted. Some of these agencies no longer wish to receive copies of the petition, while others not included in subdivision (b) have now requested copies. The Director of the Administrative Office will determine on an ongoing basis which government agencies will be provided a copy of the petition.

The number of copies of a petition that must be filed is a matter for local rule.

Committee Note to 1991 Amendments

Subdivision (b) is derived from Rule X-1002(a). The duties of the United States trustee pursuant to the Code and 28 U.S.C. § 586(a) require that the United States trustee be apprised of the commencement of every case under chapters 7, 11, 12 and 13 and this is most easily accomplished by providing that office with a copy of the petition. Although 28 U.S.C. § 586(a) does not give the United States trustee an administrative role in chapter 9 cases, § 1102 of the Code requires the United States trustee to appoint committees and that section is applicable in chapter 9 cases pursuant to § 901(a). It is therefore appropriate that the United States trustee receive a copy of every chapter 9 petition.

Notwithstanding subdivision (b), pursuant to Rule 5005(b)(3), the clerk is not required to transmit a copy of the petition to the United States trustee if the United States trustee requests that it not be transmitted. Many rules require the clerk to transmit a certain document to the United States trustee, but Rule 5005(b)(3) relieves the clerk of that duty under this or any other rule if the United States trustee requests that such document not be transmitted.

Rule 1003

INVOLUNTARY PETITION

(a) Transferor or Transferee of Claim. A transferor or transferee of a claim shall annex to the original and each copy of the petition a copy of all documents evidencing the transfer, whether transferred unconditionally, for security, or otherwise, and a signed statement that the claim was not transferred for the purpose of commencing the case and setting forth the consideration for and terms of the transfer. An entity that has transferred or acquired a claim for the purpose of commencing a case for liquidation under chapter 7 or for reorganization under chapter 11 shall not be a qualified petitioner.

(b) Joinder of Petitioners After Filing. If the answer to an involuntary petition filed by fewer than three creditors avers the existence of 12 or more creditors, the debtor shall file with the answer a list of all creditors with their addresses, a brief statement of the nature of their claims, and the amounts thereof. If it appears that there are 12 or more creditors as provided in § 303(b) of the Code, the court shall afford a reasonable opportunity for other creditors to join in the petition before a hearing is held thereon.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Case ancillary to foreign proceeding—

Commencement of and contested petitions, see § 304 of this title.

Foreign proceeding and foreign representative defined, see § 101 of this title.

Debtors for whom relief available, see § 109 of this title.

Number of copies—

Voluntary petition, see rule 1002.

Requisite allegations and joinder of parties, see § 303 of this title.

Signing and verification of petitions, see rules 1008, 9011.

Stay of acts and proceedings against debtor and estate property, see § 362 of this title.

Library References:

C.J.S. Bankruptcy §§ 37, 56, 57.

West's Key No. Digests, Bankruptcy Ⓒ2202, 2281, 2290.1.

Official Forms

Creditor's petition in involuntary case, see form 5.

Original petition to mean petition filed under this rule for purposes of statement of financial affairs, see form 7.

Committee Note

Subdivision (a). Official Form No. 11 (Involuntary Case: Creditors' Petition), is prescribed for use by petitioning creditors to have a debtor's assets liquidated under chapter 7 of the Code or the business reorganized under chapter 11. It contains the required allegations as specified in § 303(b) of the Code. Official Form 12 is prescribed for use by fewer than all the general partners to obtain relief for the partnership as governed by § 303(b)(3) of the Code and Rule 1004(b).

Although the number of copies to be filed is specified in Rule 1002, a local rule may require additional copies.

Only the original need be signed and verified, but the copies must be conformed to the original. See Rules 1008 and 9011(c). The petition must be filed with the bankruptcy court. This provision implements § 303(b) which provides that an involuntary case is commenced by filing the petition with the court.

As provided in § 362 of the Code, the filing of the petition acts as a stay of certain acts and proceedings against the debtor, the debtor's property and property of the estate.

Subdivision (c) retains the explicitness of former Bankruptcy Rule 104(d) that a transfer of a claim for the purpose of commencing a case under the Code is a ground for disqualification of a party to the transfer as a petitioner.

Section 303(b) "is not intended to overrule Bankruptcy Rule 104(d), which places certain restrictions on the transfer of claims for the purpose of commencing an involuntary case." House Report No. 95-595, 95th Cong., 1st Sess. (1977) 322; Senate Report No. 95-989, 95th Cong., 2d Sess. (1978) 33.

The subdivision requires disclosure of any transfer of the petitioner's claim as well as a transfer to the petitioner and applies to transfers for security as well as unconditional transfers. *Cf. In re 69th & Crandon Bldg. Corp.*, 97 F.2d 392, 395 (7th Cir.), cert. denied, 305 U.S. 629 (1938), recognizing the right of a creditor to sign a bankruptcy petition notwithstanding a

prior assignment of his claim for the purpose of security. This rule does not, however, qualify the requirement of § 303(b)(1) that a petitioning creditor must have a claim not contingent as to liability.

Subdivision (d). Section 303(c) of the Code permits a creditor to join in the petition at any time before the case is dismissed or relief is ordered. While this rule does not require the court to give all creditors notice of the petition, the list of creditors filed by the debtor affords a petitioner the information needed to enable him to give notice for the purpose of obtaining the co-petitioners required to make the petition sufficient. After a reasonable opportunity has been afforded other creditors to join in an involuntary petition, the hearing on the petition should be held without further delay.

Subdivision (e). This subdivision implements § 304. A petition for relief under § 304 may only be filed by a foreign representative who is defined in § 101(20) generally as a representative of an estate in a foreign proceeding. The term “foreign proceeding” is defined in § 101(19).

Section 304(b) permits a petition filed thereunder to be contested by a party in interest. Subdivision (e)(2) therefore requires that the summons and petition be served on any person against whom the relief permitted by § 304(b) is sought as well as on any other party the court may direct.

The rules applicable to the procedure when an involuntary petition is filed are made applicable generally when a case ancillary to a foreign proceeding is commenced. These rules include Rule 1010 with respect to issuance and service of a summons, Rule 1011 concerning responsive pleadings and motions, and Rule 1018 which makes various rules in Part VII applicable in proceedings on contested petitions.

The venue for a case ancillary to a foreign proceeding is provided in 28 U.S.C. § 1474.

Committee Note to 1987 Amendments

The subject matter of subdivisions (a), (b), and (e) has been incorporated in Rules 1002, 1010, 1011, and 1018.

Rule 1004

PARTNERSHIP PETITION

(a) Voluntary Petition. A voluntary petition may be filed on behalf of the partnership by one or more general partners if all general partners consent to the petition.

(b) Involuntary Petition; Notice and Summons. After filing of an involuntary petition under § 303(b)(3) of the Code, (1) the petitioning partners or other petitioners shall cause forthwith a copy of the petition to be sent to or served on each general partner who is not a petitioner; and (2) the clerk shall issue forthwith a summons for service on each general partner who is not a petitioner. Rule 1010 applies to the form and service of the summons.

Cross References

Commencement of—

Involuntary cases, see § 303 of this title.

Voluntary cases, see § 301 of this title.

Contested petition by general partners, see rule 1011.

No change in status for purposes of state or local income tax law, see § 346 of this title.

Person defined to include partnership, see § 101 of this title.

Library References:

C.J.S. Bankruptcy §§ 45 et seq.

West's Key No. Digests, Bankruptcy Ⓒ2227, 2255.1, 2281, 2290.1.

Official Forms

Original petition to mean petition filed under this rule for purposes of statement of financial affairs, see form 7.

Partner's petition in involuntary case against partnership, see form 5.

Committee Note

This rule is adapted from former Bankruptcy Rule 105 and complements §§ 301 and 303(b)(3) of the Code.

Subdivision (a) specifies that while all general partners must consent to the filing of a voluntary petition, it is not necessary that they all execute the petition. It may be executed and filed on behalf of the partnership by fewer than all.

Subdivision (b) implements § 303(b)(3) of the Code which provides that an involuntary petition may be filed by fewer than all the general partners or, when all the general partners are debtors, by a general partner, trustee of the partner or creditors of the partnership. Rule 1010, which governs service of a petition and summons in an involuntary case, specifies the time and mode of service on the partnership. When a petition is filed against a partnership under § 303(b)(3), this rule requires an additional service on the nonfiling general partners. It is the purpose of this subdivision to protect the interests of the nonpetitioning partners and the partnership.

Rule 1005**CAPTION OF PETITION**

The caption of a petition commencing a case under the Code shall contain the name of the court, the title of the case, and the docket number. The title of the case shall include the name, social security number and employer's tax identification number of the debtor and all other names used by the debtor within six years before filing the petition. If the petition is not filed by the debtor, it shall include all names used by the debtor which are known to petitioners.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Conformance of captions of creditor notices with this rule, see rule 2002.

General requirements of form for petition, see rule 9004.

Library References:

C.J.S. Bankruptcy §§ 51, 53, 57.

West's Key No. Digests, Bankruptcy Ⓒ2257, 2290.1, 2311.

Official Forms

Caption of petition, see forms 16A and 16B.

Committee Note

The title of the case should include all names used by the debtor, such as trade names, former married names and maiden name. See also Official Form No. 1 and the Advisory Committee Note to that Form. Additional names of the debtor are also required to appear in the caption of each notice to creditors. See Rule 2002(m).

Rule 1006**FILING FEE**

(a) General Requirement. Every petition shall be accompanied by the filing fee except as provided in subdivision (b) of this rule. For the purpose of this rule, “filing fee” means the filing fee prescribed by 28 U.S.C. § 1930(a)(1)–(a)(5) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code.

(b) Payment of Filing Fee in Installments.

(1) Application for Permission to Pay Filing Fee in Installments. A voluntary petition by an individual shall be accepted for filing if accompanied by the debtor’s signed application stating that the debtor is unable to pay the filing fee except in installments. The application shall state the proposed terms of the installment payments and that the applicant has neither paid any money nor transferred any property to an attorney for services in connection with the case.

(2) Action on Application. Prior to the meeting of creditors, the court may order the filing fee paid to the clerk or grant leave to pay in installments and fix the number, amount and dates of payment. The number of installments shall not exceed four, and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition.

(3) Postponement of Attorney’s Fees. The filing fee must be paid in full before the debtor or chapter 13 trustee may pay an attorney or any other person who renders services to the debtor in connection with the case.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 23, 1996, eff. Dec. 1, 1996.

Cross References

District court; filing and miscellaneous fees; rules of court, see § 1914 of Title 28, Judiciary and Judicial Procedure.
Enlargement of time for payment of filing fee installments permitted as limited under this rule, see rule 9006.
Specific amount of fee, see § 1930 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy §§ 51, 53, 57.
West’s Key No. Digests, Bankruptcy ⇨2257, 2290.1, 2311.

Official Forms

Application and order to pay filing fee in installments, see form 3.

Committee Note

28 U.S.C. § 1930 specifies the filing fees for petitions under chapters 7, 9, 11 and 13 of the Code. It also permits the payment in installments by individual debtors.

Subdivision (b) is adapted from former Bankruptcy Rule 107. The administrative cost of installments in excess of four is disproportionate to the benefits conferred. Prolonging the period beyond 180 days after the commencement of the case causes undesirable delays in administration. Paragraph (2) accordingly continues the imposition of a maximum of four on the number of installments and retains the maximum period of installment payments allowable on an original application at 120 days. Only in extraordinary cases should it be necessary to give an applicant an extension beyond the four months. The requirement of paragraph (3) that filing fees be paid in full before the debtor may pay an attorney for services in connection with the case codifies the rule declared in *In re Latham*, 271 Fed. 538 (N.D.N.Y.1921), and *In re Darr*, 232 Fed. 415 (N.D.Cal.1916).

Committee Note to 1987 Amendments

Subdivision (b)(3) is expanded to prohibit payments by the debtor or the chapter 13 trustee not only to attorneys but to any person who renders services to the debtor in connection with the case.

Committee Note to 1996 Amendments

The Judicial Conference prescribes miscellaneous fees pursuant to 28 U.S.C. § 1930(b). In 1992, a \$30 miscellaneous administrative fee was prescribed for all chapter 7 and chapter 13 cases. The Judicial Conference fee schedule was amended in 1993 to provide that an individual debtor may pay this fee in installments.

Subdivision (a) of this rule is amended to clarify that every petition must be accompanied by any fee prescribed under 28 U.S.C. § 1930(b) that is required to be paid when a petition is filed, as well as the filing fee prescribed by 28 U.S.C. § 1930(a). By defining “filing fee” to include Judicial Conference fees, the procedures set forth in subdivision (b) for paying the filing fee in installments will also apply with respect to any Judicial Conference fee required to be paid at the commencement of the case.

Rule 1007**LISTS, SCHEDULES, AND STATEMENTS; TIME LIMITS****(a) List of Creditors and Equity Security Holders.**

(1) *Voluntary Case.* In a voluntary case, the debtor shall file with the petition a list containing the name and address of each creditor unless the petition is accompanied by a schedule of liabilities.

(2) *Involuntary Case.* In an involuntary case, the debtor shall file within 15 days after entry of the order for relief, a list containing the name and address of each creditor unless a schedule of liabilities has been filed.

(3) *Equity Security Holders.* In a chapter 11 reorganization case, unless the court orders otherwise, the debtor shall file within 15 days after entry of the order for relief a list of the debtor's equity security holders of each class showing the number and kind of interests registered in the name of each holder, and the last known address or place of business of each holder.

(4) *Extension of Time.* Any extension of time for the filing of the lists required by this subdivision may be granted only on motion for cause shown and on notice to the United States trustee and to any trustee, committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code, or other party as the court may direct.

(b) Schedules and Statements Required.

(1) Except in a chapter 9 municipality case, the debtor, unless the court orders otherwise, shall file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts and unexpired leases, and a statement of financial affairs, prepared as prescribed by the appropriate Official Forms.

(2) An individual debtor in a chapter 7 case shall file a statement of intention as required by § 521(2) of the Code, prepared as prescribed by the appropriate Official Form. A copy of the statement of intention shall be served on the trustee and the creditors named in the statement on or before the filing of the statement.

(c) **Time limits.** The schedules and statements, other than the statement of intention, shall be filed with the petition in a voluntary case, or if the petition is accompanied by a list of all the debtor's creditors and their addresses, within 15 days thereafter, except as otherwise provided in subdivisions (d), (e), and (h) of this rule. In an involuntary case the schedules and statements, other than the statement of intention, shall be filed by the debtor within 15 days after entry of the order for relief. Schedules and statements filed prior to the conversion of a case to another chapter shall be deemed filed in the converted case unless the court directs otherwise. Any extension of time for the filing of the schedules and statements may be granted only on motion for cause shown and on notice to the United States trustee and to any committee elected under § 705 or appointed under § 1102 of the Code, trustee, examiner, or other party as the court may direct. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.

(d) **List of 20 Largest Creditors in Chapter 9 Municipality Case or Chapter 11 Reorganization Case.** In addition to the list required by subdivision (a) of this rule, a debtor in a chapter 9 municipality case or a debtor in a voluntary chapter 11 reorganization case shall file with the petition a list containing the name, address and claim of the creditors that hold the 20 largest unsecured claims, excluding insiders, as prescribed by the appropriate Official Form. In an involuntary chapter 11 reorganization case, such list shall be filed by the debtor within 2 days after entry of the order for relief under § 303(h) of the Code.

(e) **List in Chapter 9 Municipality Cases.** The list required by subdivision (a) of this rule shall be filed by the debtor in a chapter 9 municipality case within such time as the court shall fix. If a proposed plan requires a revision of assessments so that the proportion of special assessments or special taxes to be assessed against some real property will be different from the proportion in effect

at the date the petition is filed, the debtor shall also file a list showing the name and address of each known holder of title, legal or equitable, to real property adversely affected. On motion for cause shown, the court may modify the requirements of this subdivision and subdivision (a) of this rule.

(f) [Abrogated].

(g) Partnership and Partners. The general partners of a debtor partnership shall prepare and file the schedules of the assets and liabilities, schedule of current income and expenditures, schedule of executory contracts and unexpired leases, and statement of financial affairs of the partnership. The court may order any general partner to file a statement of personal assets and liabilities within such time as the court may fix.

(h) Interests Acquired or Arising After Petition. If, as provided by § 541(a)(5) of the Code, the debtor acquires or becomes entitled to acquire any interest in property, the debtor shall within 10 days after the information comes to the debtor's knowledge or within such further time the court may allow, file a supplemental schedule in the chapter 7 liquidation case, chapter 11 reorganization case, chapter 12 family farmer's debt adjustment case, or chapter 13 individual debt adjustment case. If any of the property required to be reported under this subdivision is claimed by the debtor as exempt, the debtor shall claim the exemptions in the supplemental schedule. The duty to file a supplemental schedule in accordance with this subdivision continues notwithstanding the closing of the case, except that the schedule need not be filed in a chapter 11, chapter 12, or chapter 13 case with respect to property acquired after entry of the order confirming a chapter 11 plan or discharging the debtor in a chapter 12 or chapter 13 case.

(i) Disclosure of List of Security Holders. After notice and hearing and for cause shown, the court may direct an entity other than the debtor or trustee to disclose any list of security holders of the debtor in its possession or under its control, indicating the name, address and security held by any of them. The entity possessing this list may be required either to produce the list or a true copy thereof, or permit inspection or copying, or otherwise disclose the information contained on the list.

(j) Impounding of Lists. On motion of a party in interest and for cause shown the court may direct the impounding of the lists filed under this rule, and may refuse to permit inspection by any entity. The court may permit inspection or use of the lists, however, by any party in interest on terms prescribed by the court.

(k) Preparation of Lists, Schedules, or Statements on Default of Debtor. If a list, schedule, or statement, other than a statement of intention, is not prepared and filed as required by this rule, the court may order the trustee, a petitioning creditor, committee, or other party to prepare and file any of these papers within a time fixed by the court. The court may approve reimbursement of the cost incurred in complying with such an order as an administrative expense.

(l) Transmission to United States Trustee. The clerk shall forthwith transmit to the United States trustee a copy of every list, schedule, and statement filed pursuant to subdivision (a)(1), (a)(2), (b), (d), or (h) of this rule.

*[Text of paragraph (m) effective December 1, 2001,
absent contrary Congressional action.]*

(m) Infants and incompetent persons. If the debtor knows that a person on the list of creditors or schedules is an infant or incompetent person, the debtor also shall include the name, address, and legal relationship of any person upon whom process would be served in an adversary proceeding against the infant or incompetent person in accordance with Rule 7004(b)(2).

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 1996, eff. Dec. 1, 1996; April 24, 2001, eff. Dec. 1, 2001, absent contrary Congressional action.

Cross References

Committee of seven unsecured creditors appointed in reorganization case, see § 1102 of this title.

Compliance with this rule upon conversion to liquidation case, see rule 1019.

Duty of debtor to—

Inform trustee as to property location and name and address of money and property obligors, see rule 4002.

Prepare and file schedule and statement, see § 521 of this title.

Enlargement of time for filing list of twenty largest unsecured creditors not permitted, see rule 9006.

Filing of proof of interest by equity security holder obviated by list filed by debtor, see rule 3003.

Immunity from self-incrimination, see § 344 of this title.

Insider for purposes of list of 20 unsecured claims defined, see § 101 of this title.

List of exempt property to be filed—

By dependent of debtor, see rule 4003.

With schedule of assets, see rule 4003.

Motions; form and service, see rule 9013.

Notice required for—

Creditors' meetings, see rule 2002.

Order for relief, see § 342 of this title.

Library References:

C.J.S. Bankruptcy §§ 44, 191.

West's Key No. Digests, Bankruptcy ⇨2321-2325, 3022.

Official Forms

Order for meeting of creditors and related orders, combined with notice thereof and of automatic stay, see form 9.

Committee Note

This rule is an adaptation of former Rules 108, 8-106, 10-108 and 11-11. As specified in the rule, it is applicable in all types of cases filed under the Code.

Subdivision (a) requires at least a list of creditors with their names and addresses to be filed with the petition. This list is needed for notice of the meeting of creditors (Rule 2002) and notice of the order for relief (§ 342 of the Code). The list will also serve to meet the requirements of § 521(1) of the Code. Subdivision (a) recognizes that it may be impossible to file the schedules required by § 521(1) and subdivision (b) of the rule at the time the petition is filed but in order for the case to proceed expeditiously and efficiently it is necessary that the clerk have the names and addresses of

creditors. It should be noted that subdivision (d) of the rule requires a special list of the 20 largest unsecured creditors in chapter 9 and 11 cases. That list is for the purpose of selecting a committee of unsecured creditors.

Subdivision (b) is derived from former Rule 11-11 and conforms with § 521. This subdivision indicates the forms to be used. The court may dispense with the filing of schedules and the statement of affairs pursuant to § 521.

Subdivisions (c) and (f) specify the time periods for filing the papers required by the rule as well as the number of copies. The provisions dealing with an involuntary case are derived from former Bankruptcy Rule 108. Under the Code, a chapter 11 case may be commenced by an involuntary petition (§ 303(a)), whereas under the Act, a Chapter XI case could have been commenced only by a voluntary petition. A motion for an extension of time to file the schedules and statements is required to be made on notice to parties, as the court may direct, including a creditors' committee if one has been appointed under § 1102 of the Code and a trustee or examiner if one has been appointed pursuant to § 1104 of the Code. Although written notice is preferable, it is not required by the rule; in proper circumstances the notice may be by telephone or otherwise.

Subdivision (d) is new and requires that a list of the 20 largest unsecured creditors, excluding insiders as defined in § 101(25) of the Code, be filed with the petition. The court, pursuant to § 1102 of the Code, is required to appoint a committee of unsecured creditors as soon as practicable after the order for relief. That committee generally is to consist of the seven largest unsecured creditors who are willing to serve. The list should, as indicated on Official Form No. 9, specify the nature and amount of the claim. It is important for the court to be aware of the different types of claims existing in the case and this form should supply such information.

Subdivision (e) applies only in chapter 9 municipality cases. It gives greater discretion to the court to determine the time for filing a list of creditors and any other matter related to the list. A list of creditors must at some point be filed since one is required by § 924 of the Code. When the plan affects special assessments, the definitions in § 902(2) and (3) for "special tax payer" and "special tax payer affected by the plan" become relevant.

Subdivision (g) is derived from former Rules 108(c) and 11-11. Nondebtor general partners are liable to the partnership's trustee for any deficiency in the partnership's estate to pay creditors in full as provided by § 723 of the Code. Subdivision (g) authorizes the court to require a partner to file a statement of personal assets and liabilities to provide the trustee with the relevant information.

Subdivision (h) is derived from former Bankruptcy Rule 108(e) for chapter 7, 11 and 13 purposes. It implements the provisions in and language of § 541(a)(5) of the Code.

Subdivisions (i) and (j) are adapted from §§ 165 and 166 of the Act and former Rule 10-108(b) and (c) without change in substance. The term "party in interest" is not defined in the Code or the rules, but reference may be made to § 1109(b) of the Code. In the context of this subdivision, the term would include the debtor, the trustee, any indenture trustee, creditor, equity security holder or committee appointed pursuant to § 1102 of the Code.

Subdivision (k) is derived from former Rules 108(d) and 10-108(a).

Committee Note to 1987 Amendments

Subdivisions (b), (c), and (g) are amended to provide for the filing of a schedule of current income and current expenditures and the individual debtor's statement of intention. These documents are required by the 1984 amendments to § 521 of the Code. Official Form No. 6A is prescribed for use by an individual debtor for filing a schedule of current income and current expenditures in a chapter 7 or chapter 11 case. Although a partnership or corporation is also required by § 521(1) to file a schedule of current income and current expenditures, no Official Form is prescribed therefor.

The time for filing the statement of intention is governed by § 521(2)(A). A copy of the statement of intention must be served on the trustee and the creditors named in the statement within the same time. The provisions of subdivision (c) governing the time for filing when a chapter 11 or chapter 13 case is converted to a chapter 7 case have been omitted from subdivision (c) as amended. Filing after conversion is now governed exclusively by Rule 1019.

Subdivision (f) has been abrogated. The number of copies of the documents required by this rule will be determined by local rule.

Subdivision (h) is amended to include a direct reference to § 541(a)(5).

Subdivision (k) provides that the court may not order an entity other than the debtor to prepare and file the statement of intention.

Committee Note to 1991 Amendments

References to Official Form numbers and to the Chapter 13 Statement are deleted and subdivision (b) is amended in anticipation of future revision and renumbering of the Official Forms. The debtor in a chapter 12 or chapter 13 case shall file the list, schedules and statements required in subdivisions (a)(1), (b)(1), and (h). It is expected that the information currently provided in the Chapter 13 Statement will be included in the schedules and statements as revised not later than the effective date of these rule amendments.

Subdivisions (a)(4) and (c) are amended to provide the United States trustee with notice of any motion to extend the time for the filing of any lists, schedules, or statements. Such notice enables the United States trustee to take appropriate steps to avoid undue delay in the administration of the case. See 28 U.S.C. § 586(a)(3)(G). Subdivisions (a)(4) and (c) are amended further to provide notice to committees elected under § 705 or appointed pursuant to § 1102 of the Code. Committees of retired employees appointed pursuant to § 1114 are not included.

The additions of references to unexpired leases in subdivisions (b)(1) and (g) indicate that the schedule requires the inclusion of unexpired leases as well as other executory contracts.

The words "with the court" in subdivisions (b)(1), (e), and (g) are deleted as unnecessary. See Rules 5005(a) and 9001(3).

Subdivision (l), which is derived from Rule X-1002(a), provides the United States trustee with the information required to perform certain administrative duties such as the appointment of a committee of unsecured creditors. In a chapter 7 case, the United States trustee should be aware of the debtor's intention with respect to collateral that secures a consumer debt so that the United States trustee may monitor the progress of the case.

Pursuant to § 307 of the Code, the United States trustee has standing to raise, appear and be heard on issues and the lists, schedules and statements contain information that, when provided to the United States trustee, enable that office to participate effectively in the case. The United States trustee has standing to move to dismiss a chapter 7 or 13 case for failure to file timely the list, schedules or statement required by § 521(l) of the Code. See §§ 707(a)(3) and 1307(c)(9). It is therefore necessary for the United States trustee to receive notice of any extension of time to file such documents. Upon request, the United States trustee also may receive from the trustee or debtor in possession a list of equity security holders.

Committee Note to 1996 Amendments

Subdivision (c) is amended to provide that schedules and statements filed prior to the conversion of a case to another chapter shall be deemed filed in the converted case, whether or not the case was a chapter 7 case prior to conversion. This amendment is in recognition of the 1991 amendments to the Official Forms that abrogated the Chapter 13 Statement and made the same forms for schedules and statements applicable in all cases.

This subdivision also contains a technical correction. The phrase “superseded case” creates the erroneous impression that conversion of a case results in a new case that is distinct from the original case. The effect of conversion of a case is governed by § 348 of the Code.

Committee Note to 2001 Amendments

Subdivision (m) is added to enable the person required to mail notices under Rule 2002 to mail them to the appropriate guardian or other representative when the debtor knows that a creditor or other person listed is an infant or incompetent person.

The proper mailing address of the representative is determined in accordance with Rule 7004(b)(2), which requires mailing to the person’s dwelling house or usual place of abode or at the place where the person regularly conducts a business or profession.

Rule 1008

VERIFICATION OF PETITIONS AND ACCOMPANYING PAPERS

All petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746. Amended Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Signing and verification of papers, see rule 9011.

Library References:

C.J.S. Bankruptcy §§ 44 et seq., 191.

West’s Key No. Digests, Bankruptcy Ⓒ2257, 2290.1–2292, 2311, 2321–2325, 3022.

Official Forms

Form of unsworn declaration—

Corporation or partnership, see form 2.

Individual, see form 1.

Committee Note

This rule retains the requirement under the Bankruptcy Act and rules that petitions and accompanying papers must be verified. Only the original need be signed and verified, but the copies must be conformed to the original. See Rule 9011(c).

The verification may be replaced by an unsworn declaration as provided in 28 U.S.C. § 1746. See also, Official Form No. 1 and Advisory Committee Note.

Committee Note to 1991 Amendments

The amendments to this rule are stylistic.

Rule 1009**AMENDMENTS OF VOLUNTARY PETITIONS,
LISTS, SCHEDULES AND STATEMENTS**

(a) General Right to Amend. A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby. On motion of a party in interest, after notice and a hearing, the court may order any voluntary petition, list, schedule, or statement to be amended and the clerk shall give notice of the amendment to entities designated by the court.

(b) Statement of Intention. The statement of intention may be amended by the debtor at any time before the expiration of the period provided in § 521(2)(B) of the Code. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby.

(c) Transmission to United States Trustee. The clerk shall forthwith transmit to the United States trustee a copy of every amendment filed pursuant to subdivision (a) or (b) of this rule.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Dischargeability of debts added to list or schedule, see § 523 of this title.
Motions; form and service, see rule 9013.

Library References:

C.J.S. Bankruptcy §§ 44 et seq., 191.
West's Key No. Digests, Bankruptcy Ⓒ2257, 2290.1-2292, 2311, 2321-2325, 3022.

Committee Note

This rule continues the permissive approach adopted by former Bankruptcy Rule 110 to amendments of voluntary petitions and accompanying papers. Notice of any amendment is required to be given to the trustee. This is particularly important with respect to any amendment of the schedule of property affecting the debtor's claim of exemptions. Notice of any amendment of the schedule of liabilities is to be given to any creditor whose claim is changed or newly listed.

The rule does not continue the provision permitting the court to order an amendment on its own initiative. Absent a request in some form by a party in interest, the court should not be involved in administrative matters affecting the estate.

If a list or schedule is amended to include an additional creditor, the effect on the dischargeability of the creditor's claim is governed by the provisions of § 523(a)(3) of the Code.

Committee Note to 1987 Amendments

Subdivision (a) is amended to require notice and a hearing in the event a party in interest other than the debtor seeks to amend. The number of copies of the amendment will be determined by local rule of court.

Subdivision (b) is added to treat amendments of the statement of intention separately from other amendments. The intention of the individual debtor must be performed within 45 days of the filing of the statement, unless the court extends the period. Subdivision (b) limits the time for amendment to the time for performance under § 521(2)(B) of the Code or any extension granted by the court.

Committee Note to 1991 Amendments

The amendments to subdivision (a) are stylistic.

Subdivision (c) is derived from Rule X-1002(a) and is designed to provide the United States trustee with current information to enable that office to participate effectively in the case.

Rule 1010

SERVICE OF INVOLUNTARY PETITION AND SUMMONS; PETITION COMMENCING ANCILLARY CASE

On the filing of an involuntary petition or a petition commencing a case ancillary to a foreign proceeding the clerk shall forthwith issue a summons for service. When an involuntary petition is filed, service shall be made on the debtor. When a petition commencing an ancillary case is filed, service shall be made on the parties against whom relief is sought pursuant to § 304(b) of the Code and on any other parties as the court may direct. The summons shall be served with a copy of the petition in the manner provided for service of a summons and complaint by Rule 7004(a) or (b). If service cannot be so made, the court may order that the summons and petition be served by mailing copies to the party's last known address, and by at least one publication in a manner and form directed by the court. The summons and petition may be served on the party anywhere. Rule 7004(e) and Rule 4(l) F.R.Civ.P. apply when service is made or attempted under this rule.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993; Apr. 11, 1997, eff. Dec. 1, 1997.

Cross References

Applicability of this rule to—

Involuntary case ancillary to foreign proceeding, see rule 1003.

Involuntary partnership petitions, see rule 1004.

Form and manner of service by publication, see rules 9007, 9008.

Jurisdictional basis for service, see § 109 of this title.

Library References:

C.J.S. Bankruptcy §§ 30, 39, 57.

West's Key No. Digests, Bankruptcy Ⓒ2158, 2290.1, 2341.

Committee Note

This rule provides the procedure for service of the involuntary petition and summons. It does not deal with service of a summons and complaint instituting an adversary proceeding pursuant to Part VII.

While this rule is similar to former Bankruptcy Rule 111, it substitutes the clerk of the bankruptcy court for the clerk of the district court as the person who is to issue the summons.

The modes of service prescribed by the rule are personal or by mail, when service can be effected in one of these ways in the United States. Such service is to be made in the manner prescribed in adversary proceedings by Rule 7004(a) and (b). If service must be made in a foreign country, the mode of service is one of that set forth in Rule 4(i) F.R.Civ.P.

When the methods set out in Rule 7004(a) and (b) cannot be utilized, service by publication coupled with mailing to the last known address is authorized. *Cf.* Rule 7004(c). The court determines the form and manner of publication as provided in Rule 9007. The publication need not set out the petition or the order directing service by publication. In order to apprise the debtor fairly, however, the publication should include all the information required to be in the summons by Official Form No. 13 and a notice indicating how service is being effected and how a copy of the petition may be obtained.

There are no territorial limits on the service authorized by this rule, which continues the practice under the former rules and Act. There must, however, be a basis for jurisdiction pursuant to § 109(a) of the Code for the court to order relief. Venue provisions are set forth in 28 U.S.C. § 1472.

Subdivision (f) of Rule 7004 and subdivisions (g) and (h) of Rule 4 F.R.Civ.P. govern time and proof of service and amendment of process or of proof of service.

Rule 1004 provides for transmission to nonpetitioning partners of a petition filed against the partnership by fewer than all the general partners.

Committee Note to 1987 Amendments

The rule has been broadened to include service of a petition commencing a case ancillary to a foreign proceeding, previously included in Rule 1003(e)(2).

Committee Note to 1991 Amendments

Reference to the Official Form number is deleted in anticipation of future revision and renumbering of the Official Forms.

Rule 4(g) and (h) F.R.Civ.P. made applicable by this rule refers to Rule 4(g) and (h) F.R.Civ.P. in effect on January 1, 1990, notwithstanding any subsequent amendment thereto. See Rule 7004(g).

Committee Note to 1993 Amendments

This rule is amended to delete the reference to the Official Form. The Official Form for the summons was abrogated in 1991. Other amendments are stylistic and make no substantive change.

Committee Note to 1997 Amendments

The amendments to this rule are technical, are promulgated solely to conform to changes in subdivision designations in Rule 4, F.R.Civ.P., and in Rule 7004, and are not intended to effectuate any material change in substance.

In 1996, the letter designation of subdivision (f) of Rule 7004 (Summons; Time Limit for Service) was changed to subdivision (e). In 1993, the provisions of Rule 4, F.R.Civ.P., relating to proof of service contained in Rule 4(g) (Return) and Rule 4(h) (Amendments) were placed in the new subdivision (l) of Rule 4 (Proof of Service). The technical amendments to Rule 1010 are designed solely to conform to these new subdivision designations.

The 1996 amendments to Rule 7004 and the 1993 amendments to Rule 4, F.R.Civ.P., have not affected the availability of service by first class mail in accordance with Rule 7004(b) for the service of a summons and petition in an involuntary case commenced under § 303 or an ancillary case commenced under § 304 of the Code.

Rule 1011**RESPONSIVE PLEADING OR MOTION IN INVOLUNTARY
AND ANCILLARY CASES**

(a) Who May Contest Petition. The debtor named in an involuntary petition or a party in interest to a petition commencing a case ancillary to a foreign proceeding may contest the petition. In the case of a petition against a partnership under Rule 1004(b), a nonpetitioning general partner, or a person who is alleged to be a general partner but denies the allegation, may contest the petition.

(b) Defenses and Objections; When Presented. Defenses and objections to the petition shall be presented in the manner prescribed by Rule 12 F.R.Civ.P. and shall be filed and served within 20 days after service of the summons, except that if service is made by publication on a party or partner not residing or found within the state in which the court sits, the court shall prescribe the time for filing and serving the response.

(c) Effect of Motion. Service of a motion under Rule 12(b) F.R.Civ.P. shall extend the time for filing and serving a responsive pleading as permitted by Rule 12(a) F.R.Civ.P.

(d) Claims Against Petitioners. A claim against a petitioning creditor may not be asserted in the answer except for the purpose of defeating the petition.

(e) Other Pleadings. No other pleadings shall be permitted, except that the court may order a reply to an answer and prescribe the time for filing and service.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Applicability of this rule to involuntary case ancillary to foreign proceeding, see rule 1003.

Entry of default upon failure to plead within time, see rule 1013.

Motions; form and service, see rule 9013.

Responsive pleadings, see § 303 of this title.

Library References:

C.J.S. Bankruptcy §§ 39, 60.

West's Key No. Digests, Bankruptcy Ⓒ2294, 2341.

Committee Note

This rule is derived from former Bankruptcy Rule 112. A petition filed by fewer than all the general partners under Rule 1004(b) to have an order for relief entered with respect to the partnership is referred to as a petition against the partnership because of the adversary character of the proceeding it commences. *Cf.* § 303(b)(3) of the Code; 2 Collier *Bankruptcy* ¶ 303.05[5][a] (15th ed. 1981); 2 *id.* ¶¶ 18.33[2], 18.46 (14th ed. 1966). One who denies an allegation of membership in the firm is nevertheless recognized as a party entitled to contest a petition filed against a partnership under subdivision (b) of Rule 1004 in view of the possible consequences to him of an order for relief against the entity alleged to include him as a member. See § 723 of the Code; *Francis v. McNeal*, 228 U.S. 695 (1913); *Manson v. Williams*, 213 U.S. 453 (1909); *Carter v. Whisler*, 275 Fed. 743, 746-747 (8th Cir. 1921). The rule preserves the features of the former Act and Rule 112 and the Code permitting no response by creditors to an involuntary petition or petition against a partnership under Rule 1004(b).

Subdivision (b). Rule 12 F.R.Civ.P. has been looked to by the courts as prescribing the mode of making a defense or objection to a petition in bankruptcy. See *Fada of New York, Inc. v. Organization Service Co., Inc.*, 125 F.2d 120 (2d Cir. 1942); *In the Matter of McDougald*, 17 F.R.D. 2, 5 (W.D.Ark.1955); *In the Matter of Miller*, 6 Fed. Rules Serv. 12f.26, Case No. 1 (N.D. Ohio 1942); *Tatum v. Acadian Production Corp. of La.*, 35 F.Supp. 40, 50 (E.D.La.1940); 2 Collier, *supra* ¶ 303.07 (15th ed. 1981); 2 *id.* at 134-40 (14th ed. 1966). As pointed out in the Note accompanying former Bankruptcy Rule 915 an objection that a debtor is neither entitled to the benefits of the Code nor amenable to an involuntary petition goes to jurisdiction of the subject matter and may be made at any time consistent with Rule 12(h)(3) F.R.Civ.P. Nothing in this rule recognizes standing in a creditor or any other person not authorized to contest a petition to raise an objection that a person eligible to file a voluntary petition cannot be the subject of an order for relief on an involuntary petition. See Seligson & King, *Jurisdiction and Venue in Bankruptcy*, 36 Ref.J. 36, 38-40 (1962).

As Collier has pointed out with respect to the Bankruptcy Act, "the mechanics of the provisions in § 18a and b relating to time for appearance and pleading are unnecessarily confusing. . . . It would seem, though, to be more straightforward to provide, as does Federal Rule 12(a), that the time to respond runs from the date of service rather than the date of issuance of process." 2 Collier, *supra* at 119. The time normally allowed for the service and filing of an answer or motion under Rule 1011 runs from the date of the issuance of the summons. Compare Rule 7012. Service of the summons and petition will ordinarily be made by mail under Rule 1010 and must be made within 10 days of the issuance of the summons under Rule 7004(e), which governs the time of service. When service is made by publication, the court should fix the time for service and filing of the response in the light of all the circumstances so as to afford a fair opportunity to the debtor to enter a defense or objection without unduly delaying the hearing on the petition. *Cf.* Rule 12(a) F.R.Civ.P.

Subdivision (c). Under subdivision (c), the timely service of a motion permitted by Rule 12(b), (e), (f), or (h) F.R.Civ.P. alters the time within which an answer must be filed. If the court denies a motion or postpones its disposition until trial on the merits, the answer must be served within 10 days after notice of the court's action. If the court grants a motion for a more definite statement, the answer may be served any time within 10 days after the service of the more definite statement.

Many of the rules governing adversary proceedings apply to proceedings on a contested petition unless the court otherwise directs as provided in Rule 1018. The specific provisions of this Rule 1011 or 7005, however, govern the filing of an answer or motion responsive to a petition. The rules of Part VII are adaptations of the corresponding Federal Rules of Civil Procedure, and the effect of Rule 1018 is thus to make the provisions of Civil Rules 5, 8, 9, 15, and 56, *inter alia*, generally applicable to the making of defenses and objections to the petition. Rule 1018 follows prior law and practice in this respect. See 2 Collier, *Bankruptcy* ¶¶ 18.39–18.41 (14th ed. 1966).

Subdivision (d). This subdivision adopts the position taken in many cases that an affirmative judgment against a petitioning creditor cannot be sought by a counterclaim filed in an answer to an involuntary petition. See, e.g., *Georgia Jewelers, Inc. v. Bulova Watch Co.*, 302 F.2d 362, 369–70 (5th Cir. 1962); *Associated Electronic Supply Co. of Omaha v. C.B.S. Electronic Sales Corp.*, 288 F.2d 683, 684–85 (8th Cir. 1961). The subdivision follows *Harris v. Capehart-Farnsworth Corp.*, 225 F.2d 268 (8th Cir. 1955), in permitting the debtor to challenge the standing of a petitioner by filing a counterclaim against him. It does not foreclose the court from rejecting a counterclaim that cannot be determined without unduly delaying the decision upon the petition. See *In the Matter of Bichel Optical Laboratories, Inc.*, 299 F.Supp. 545 (D.Minn.1969).

Subdivision (e). This subdivision makes it clear that no reply needs to be made to an answer, including one asserting a counterclaim, unless the court orders otherwise.

Committee Note to 1987 Amendments

The rule has been broadened to make applicable in ancillary cases the provisions concerning responsive pleadings to involuntary petitions.

Rule 1012

[ABROGATED]

Abrogated Mar. 30, 1987, eff. Aug. 1, 1987.

Committee Note

This rule is adapted from former Bankruptcy Rule 114. Since the provisions in § 303 of the Code apply equally to chapter 7 and 11 cases, the rule applies in both types of cases.

Former Rule 114 was derived from § 3d of the Bankruptcy Act but added the three sanctions in Rule 37, F.R.Civ.P. Former Rule 114 thus differed from the holdings in *In re Richards Discount Jewelers, Inc.*, 303 F.Supp. 517, 518 (S.D.N.Y.1969), and *In the Matter of Shulund*, 210 F.Supp. 195, 199–200 (D.Mont.1962), that § 3d of the Act was inconsistent with Rule 37 and

prescribed the only consequence for failure of the bankrupt to appear with his papers and submit to an examination on the issue of insolvency or inability to pay debts.

Rule 2004 deals with examination of the debtor. The last sentence of Rule 1012 is continued in part from former Rule 114 which eliminates doubts as to the availability to petitioning creditors of an examination of the debtor and others in accordance with the practice that developed under § 21a of the Act. See 1 Collier, *Bankruptcy* ¶ 3.208[2] (14th ed. 1961); 2 *id.* ¶ 18.41[7] (1966); 2 *id.* ¶ 21.08 (1964); 2 *id.* ¶¶ 105.04, 343.01–.12, 344.01 *et seq.* (15th ed. 1981); 3 *id.* ¶ 521.13. The discovery procedures of Rules 26–37, F.R.Civ. P., available in proceedings on a contested involuntary petition pursuant to Rule 1018 are explicitly made applicable to the issue of nonpayment of debts by Rule 1012.

Committee Note to 1987 Amendments

This rule is abrogated. The discovery rules apply whenever an involuntary petition is contested. Rule 1018.

Rule 1013

HEARING AND DISPOSITION OF A PETITION IN AN INVOLUNTARY CASE

(a) Contested Petition. The court shall determine the issues of a contested petition at the earliest practicable time and forthwith enter an order for relief, dismiss the petition, or enter any other appropriate order.

(b) Default. If no pleading or other defense to a petition is filed within the time provided by Rule 1011, the court, on the next day, or as soon thereafter as practicable, shall enter an order for the relief requested in the petition.

(c) [Abrogated]

Amended Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993.

Cross References

Costs, counsel fees, expenses and damages upon dismissal of petition, see § 303 of this title.
Demand for jury trial, see rule 9015.
Power of court to render judgments, see § 105 of this title.
Setting aside default for cause, see rule 9024.

Library References:

C.J.S. Bankruptcy §§ 61–63.
West's Key No. Digests, Bankruptcy Ⓒ2295.1, 2297.

Committee Note

This rule is adapted from former Bankruptcy Rule 115(a) and (c) and applies in chapter 7 and 11 cases. The right to trial by jury under § 19a of the Bankruptcy Act has been abrogated and the availability of a trial by jury is within the discretion of the bankruptcy judge pursuant to 28 U.S.C. § 1480(b). Rule 9015 governs the demand for a jury trial.

Subdivision (b) of Rule 1013 is derived from former Bankruptcy Rule 115(c) and § 18(e) of the Bankruptcy Act. If an order for relief is not entered on default, dismissal will ordinarily be appropriate but the court may post-

pone definitive action. See also Rule 9024 with respect to setting aside an order for relief on default for cause.

Subdivision (e) of former Bankruptcy Rule 115 has not been carried over because its provisions are covered by § 303(i) of the Code.

Committee Note to 1991 Amendments

Reference to the Official Form number is deleted in anticipation of future revision and renumbering of the Official Forms.

Committee Note to 1993 Amendments

Subdivision (c) is abrogated because the official form for the order for relief was abrogated in 1991. Other amendments are stylistic and make no substantive change.

Rule 1014

DISMISSAL AND CHANGE OF VENUE

(a) Dismissal and Transfer of Cases.

(1) *Cases Filed in Proper District.* If a petition is filed in a proper district, on timely motion of a party in interest, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, the case may be transferred to any other district if the court determines that the transfer is in the interest of justice or for the convenience of the parties.

(2) *Cases Filed in Improper District.* If a petition is filed in an improper district, on timely motion of a party in interest and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, the case may be dismissed or transferred to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties.

(b) Procedure When Petitions Involving the Same Debtor or Related Debtors are Filed in Different Courts. If petitions commencing cases under the Code are filed in different districts by or against (1) the same debtor, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, on motion filed in the district in which the petition filed first is pending and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, the court may determine, in the interest of justice or for the convenience of the parties, the district or districts in which the case or cases should proceed. Except as otherwise ordered by the court in the district in which the petition filed first is pending, the proceedings on the other petitions shall be stayed by the courts in which they have been filed until the determination is made.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Change of venue, see § 1404 of Title 28, Judiciary and Judicial Procedure.

Motions: form and service, see rule 9013.

Transfer of adversary proceeding, see rule 7087.

Library References:

C.J.S. Bankruptcy §§ 22-25, 30.

West's Key No. Digests, Bankruptcy Ⓒ2081-2091.

Committee Note

This rule is derived from former Bankruptcy Rule 116 which contained venue as well as transfer provisions. Public Law 95-598, however, placed the venue provisions in 28 U.S.C. § 1472, and no purpose is served by repeating them in this rule. Transfer of cases is provided in 28 U.S.C. § 1475 but this rule adds the procedure for obtaining transfer. Pursuant to 28 U.S.C. § 1472, proper venue for cases filed under the Code is either the district of domicile, residence, principal place of business, or location of principal assets for 180 days or the longer portion thereof immediately preceding the petition. 28 U.S.C. § 1475 permits the court to transfer a case in the interest of justice and for the convenience of the parties. If the venue is improper, the court may retain or transfer the case in the interest of justice and for the convenience of the parties pursuant to 28 U.S.C. § 1477.

Subdivision (a) of the rule is derived from former Bankruptcy Rule 116(b). It implements 28 U.S.C. §§ 1475 and 1477 and clarifies the procedure to be followed in requesting and effecting transfer of a case. Subdivision (a) protects the parties against being subjected to a transfer except on a timely motion of a party in interest. If the transfer would result in fragmentation or duplication of administration, increase expense, or delay closing the estate, such a factor would bear on the timeliness of the motion as well as on the propriety of the transfer under the standards prescribed in subdivision (a). Subdivision (a) of the rule requires the interest of justice and the convenience of the parties to be the grounds of any transfer of a case or of the retention of a case filed in an improper district as does 28 U.S.C. § 1477. *Cf.* 28 U.S.C. § 1404(a) (district court may transfer any civil action “[f]or the convenience of parties and witnesses, in the interest of justice”). It also expressly requires a hearing on notice to the petitioner or petitioners before the transfer of any case may be ordered. Under this rule, a motion by a party in interest is necessary. There is no provision for the court to act on its own initiative.

Subdivision (b) is derived from former Bankruptcy Rule 116(c). It authorizes the court in which the first petition is filed under the Code by or against a debtor to entertain a motion seeking a determination whether the case so commenced should continue or be transferred and consolidated or administered jointly with another case commenced by or against the same or related person in another court under a different chapter of the Code. Subdivision (b) is correlated with 28 U.S.C. § 1472 which authorizes petitioners to file cases involving a partnership and partners or affiliated debtors.

The reference in subdivision (b) to petitions filed “by” a partner or “by” any other of the persons mentioned is to be understood as referring to voluntary petitions. It is not the purpose of this subdivision to permit more than one case to be filed in the same court because a creditor signing an involuntary petition happens to be a partner, a partnership, or an affiliate of a debtor.

Transfers of adversary proceedings in cases under title 11 are governed by Rule 7087 and 28 U.S.C. § 1475.

Committee Note to 1987 Amendments

Both paragraphs 1 and 2 of subdivision (a) are amended to conform to the standard for transfer in 28 U.S.C. § 1412. Formerly, 28 U.S.C. § 1477 authorized a court either to transfer or retain a case which had been commenced in a district where venue was improper. However, 28 U.S.C. § 1412, which supersedes 28 U.S.C. § 1477, authorizes only the transfer of a case. The rule is amended to delete the reference to retention of a case commenced in the improper district. Dismissal of a case commenced in the improper district as authorized by 28 U.S.C. § 1406 has been added to the rule. If a timely motion to dismiss for improper venue is not filed, the right to object to venue is waived.

The last sentence of the rule has been deleted as unnecessary.

Committee Note to 1991 Amendments

Subdivision (b) is amended to provide that a motion for transfer of venue under this subdivision shall be filed in the district in which the first petition is pending. If the case commenced by the first petition has been transferred to another district prior to the filing of a motion to transfer a related case under this subdivision, the motion must be filed in the district to which the first petition had been transferred.

The other amendments to this rule are consistent with the responsibilities of the United States trustee in the supervision and administration of cases pursuant to 28 U.S.C. § 586(a)(3). The United States trustee may appear and be heard on issues relating to the transfer of the case or dismissal due to improper venue. See § 307 of the Code.

Rule 1015**CONSOLIDATION OR JOINT ADMINISTRATION
OF CASES PENDING IN SAME COURT**

(a) Cases Involving Same Debtor. If two or more petitions are pending in the same court by or against the same debtor, the court may order consolidation of the cases.

(b) Cases Involving Two or More Related Debtors. If a joint petition or two or more petitions are pending in the same court by or against (1) a husband and wife, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of a husband and wife shall, if one spouse has elected the exemptions under § 522(b)(1) of the Code and the other has elected the exemptions under § 522(b)(2), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by § 522(b)(1).

(c) Expediting and Protective Orders. When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to

this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Election of trustees in liquidation cases when joint administration ordered, see rule 2009.
Joint cases, see § 302 of this title.

Library References:

C.J.S. Bankruptcy §§ 23, 53.
West's Key No. Digests. Bankruptcy C=2084.1-2085, 2311.

Committee Note

Subdivision (a) of this rule is derived from former Bankruptcy Rule 117(a). It applies to cases when the same debtor is named in both voluntary and involuntary petitions, when husband and wife have filed a joint petition pursuant to § 302 of the Code, and when two or more involuntary petitions are filed against the same debtor. It also applies when cases are pending in the same court by virtue of a transfer of one or more petitions from another court. Subdivision (c) allows the court discretion regarding the order of trial of issues raised by two or more involuntary petitions against the same debtor.

Subdivision (b) recognizes the propriety of joint administration of estates in certain kinds of cases. The election or appointment of one trustee for two or more jointly administered estates is authorized by Rule 2009. The authority of the court to order joint administration under subdivision (b) extends equally to the situation when the petitions are filed under different sections, e.g., when one petition is voluntary and the other involuntary, and when all of the petitions are filed under the same section of the Code.

Consolidation of cases implies a unitary administration of the estate and will ordinarily be indicated under the circumstances to which subdivision (a) applies. This rule does not deal with the consolidation of cases involving two or more separate debtors. Consolidation of the estates of separate debtors may sometimes be appropriate, as when the affairs of an individual and a corporation owned or controlled by that individual are so intermingled that the court cannot separate their assets and liabilities. Consolidation, as distinguished from joint administration, is neither authorized nor prohibited by this rule since the propriety of consolidation depends on substantive considerations and affects the substantive rights of the creditors of the different estates. For illustrations of the substantive consolidation of separate estates, see *Sampsel v. Imperial Paper & Color Corp.*, 313 U.S. 215 (1941). See also *Chemical Bank N.Y. Trust Co. v. Kheel*, 369 F.2d 845 (2d Cir. 1966); Seligson & Mandell, *Multi-Debtor Petition—Consolidation of Debtors and Due Process of Law*, 73 Com.L.J. 341 (1968); Kennedy, *Insolvency and the Corporate Veil in the United States* in *Proceedings of the 8th International Symposium on Comparative Law* 232, 248-55 (1971).

Joint administration as distinguished from consolidation may include combining the estates by using a single docket for the matters occurring in the administration, including the listing of filed claims, the combining of notices to creditors of the different estates, and the joint handling of other purely administrative matters that may aid in expediting the cases and rendering the process less costly.

Subdivision (c) is an adaptation of the provisions of Rule 42(a) F.R.Civ.P. for the purposes of administration of estates under this rule. The rule does not deal with filing fees when an order for the consolidation of cases or joint administration of estates is made.

A joint petition of husband and wife, requiring the payment of a single filing fee, is permitted by § 302 of the Code. Consolidation of such a case, however, rests in the discretion of the court; see § 302(b) of the Code.

Committee Note to 1987 Amendments

The amendment to subdivision (b) implements the provisions of § 522(b) of the Code, as enacted by the 1984 amendments.

Rule 1016

DEATH OR INCOMPETENCY OF DEBTOR

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

Amended Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Exemptions, see § 522 of this title.

Property of estate, see § 541 of this title.

Library References:

C.J.S. Bankruptcy §§ 37, 41.

West's Key No. Digests, Bankruptcy ⌘2201.

Committee Note

This rule is derived from former Rules 118 and 11-16. In a chapter 11 reorganization case or chapter 13 individual's debt adjustment case, the likelihood is that the case will be dismissed.

Committee Note to 1991 Amendments

This rule is amended to conform to 25 F.R.Civ.P. and to include chapter 12 cases.

Rule 1017

DISMISSAL OR CONVERSION OF CASE; SUSPENSION

(a) Voluntary Dismissal; Dismissal for Want of Prosecution or Other Cause. Except as provided in §§ 707(a)(3), 707(b), 1208(b), and 1307(b) of the Code, and in Rule 1017(b), (c), and (e), a case shall not be dismissed on motion of

the petitioner, for want of prosecution or other cause, or by consent of the parties, before a hearing on notice as provided in Rule 2002. For the purpose of the notice, the debtor shall file a list of creditors with their addresses within the time fixed by the court unless the list was previously filed. If the debtor fails to file the list, the court may order the debtor or another entity to prepare and file it.

(b) Dismissal for Failure to Pay Filing Fee.

(1) If any installment of the filing fee has not been paid, the court may, after a hearing on notice to the debtor and the trustee, dismiss the case.

(2) If the case is dismissed or closed without full payment of the filing fee, the installments collected shall be distributed in the same manner and proportions as if the filing fee had been paid in full.

(c) Dismissal of Voluntary Chapter 7 or Chapter 13 Case for Failure to Timely File List of Creditors, Schedules, and Statement of Financial Affairs. The court may dismiss a voluntary chapter 7 or chapter 13 case under § 707(a)(3) or § 1307(c)(9) after a hearing on notice served by the United States trustee on the debtor, the trustee, and any other entities as the court directs.

(d) Suspension. The court shall not dismiss a case or suspend proceedings under § 305 before a hearing on notice as provided in Rule 2002(a).

(e) Dismissal of an Individual Debtor's Chapter 7 Case for Substantial Abuse. The court may dismiss an individual debtor's case for substantial abuse under s 707(b) only on motion by the United States trustee or on the court's own motion and after a hearing on notice to the debtor, the trustee, the United States trustee, and any other entities as the court directs.

(1) A motion to dismiss a case for substantial abuse may be filed by the United States trustee only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request filed by the United States trustee before the time has expired, the court for cause extends the time for filing the motion to dismiss. The United States trustee shall set forth in the motion all matters to be submitted to the court for its consideration at the hearing.

(2) If the hearing is set on the court's own motion, notice of the hearing shall be served on the debtor no later than 60 days after the first date set for the meeting of creditors under § 341(a). The notice shall set forth all matters to be considered by the court at the hearing.

(f) Procedure for Dismissal, Conversion, or Suspension.

(1) Rule 9014 governs a proceeding to dismiss or suspend a case, or to convert a case to another chapter, except under §§ 706(a), 1112(a), 1208(a) or (b), or 1307(a) or (b).

(2) Conversion or dismissal under §§ 706(a), 1112(a), 1208(b), or 1307(b) shall be on motion filed and served as required by Rule 9013.

(3) A chapter 12 or chapter 13 case shall be converted without court order when the debtor files a notice of conversion under §§ 1208(a) or 1307(a). The filing date of the notice becomes the date of the conversion order for the purposes of applying § 348(c) and Rule 1019. The clerk shall promptly transmit a copy of the notice to the United States trustee.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993; Apr. 29, 1999, eff. Dec. 1, 1999; Apr. 17, 2000, eff. Dec. 1, 2000.

Cross References

Conversion of—

Individual debt adjustment case, see § 1307 of this title.

Liquidation case, see § 706 of this title.

Reorganization case, see § 1112 of this title.

Dismissal of—

Individual debt adjustment case, see § 1307 of this title.

Involuntary petition, see § 303 of this title.

Liquidation case, see § 707 of this title.

Reorganization case, see § 1112 of this title.

Enlargement of thirty-day period for notice of dismissal for failure to pay filing fee not permitted, see rule 9006.

Motions: form and service, see rule 9013.

Library References:

C.J.S. Bankruptcy §§ 42 et seq., 378, 418 et seq.

West's Key No. Digests, Bankruptcy ☞2252.1-2254, 2259.1-2264(3), 2295.1, 2331-2332, 3591(1)-3594, 3673, 3716.10-3717.

Committee Note

Subdivision (a) of this rule is derived from former Bankruptcy Rule 120(a). While the rule applies to voluntary and involuntary cases, the “consent of the parties” referred to is that of petitioning creditors and the debtor in an involuntary case. The last sentence recognizes that the court should not be confined to petitioning creditors in its choice of parties on whom to call for assistance in preparing the list of creditors when the debtor fails to do so. This subdivision implements §§ 303(j), 707, 1112 and 1307 of the Code by specifying the manner of and persons to whom notice shall be given and requiring the court to hold a hearing on the issue of dismissal.

Subdivision (b) is derived from former Bankruptcy Rule 120(b). A dismissal under this subdivision can occur only when the petition has been permitted to be filed pursuant to Rule 1006(b). The provision for notice in paragraph (3) is correlated with the provision in Rule 4006 when there is a waiver, denial, or revocation of a discharge. As pointed out in the Note accompanying Rule 4008, the purpose of notifying creditors of a debtor that no discharge has been granted is to correct their assumption to the contrary so that they can take appropriate steps to protect their claims.

Subdivision (c) is new and specifies the notice required for a hearing on dismissal or suspension pursuant to § 305 of the Code. The suspension to which this subdivision refers is that of the case; it does not concern abstention of the court in hearing an adversary proceeding pursuant to 28 U.S.C. § 1478(b).

Subdivision (d). Any proceeding, whether by a debtor or other party, to dismiss or convert a case under §§ 706, 707, 1112, or 1307 is commenced by a motion pursuant to Rule 9014.

Committee Note to 1987 Amendments

Subdivision (d) is amended to provide that dismissal or conversion pursuant to §§ 706(a), 707(b), 1112(a), and 1307(b) is not automatically a contested matter under Rule 9014. Conversion or dismissal under these sections is initiated by the filing and serving of a motion as required by Rule 9013. No hearing is required on these motions unless the court directs.

Conversion of a chapter 13 case to a chapter 7 case as authorized by § 1307(a) is accomplished by the filing of a notice of conversion. The notice of conversion procedure is modeled on the voluntary dismissal provision of Rule 41(a)(1) F.R.Civ.P. Conversion occurs on the filing of the notice. No court order is required.

Subdivision (e) is new and provides the procedure to be followed when a court on its own motion has made a preliminary determination that an individual debtor's chapter 7 case may be dismissed pursuant to § 707(b) of the Code, which was added by the 1984 amendments. A debtor's failure to attend the hearing is not a ground for dismissal pursuant to § 707(b).

Committee Note to 1991 Amendments

Subdivision (a) is amended to clarify that all entities required to receive notice under Rule 2002, including but not limited to creditors, are entitled to the 20 day notice of the hearing to dismiss the case. The United States trustee receives the notice pursuant to Rule 2002(k).

The word "petition" is changed to "case" in subdivisions (a), (b), and (c) to conform to §§ 707, 930, 1112, 1208, and 1307.

Subdivision (d) is amended to conform to § 348(c) of the Code which refers to the "conversion order."

Subdivisions (a) and (d) are amended to provide procedures for dismissal or conversion of a chapter 12 case. Procedures for dismissal or conversion under § 1208(a) and (b) are the same as the procedures for dismissal or conversion of a chapter 13 case under § 1307(a) and (b).

Subdivision (e) is amended to conform to the 1986 amendment to § 707(b) of the Code which permits the United States trustee to make a motion to dismiss a case for substantial abuse. The time limit for such a motion is added by this subdivision. In general, the facts that are the basis for a motion to dismiss under § 707(b) exist at the time the case is commenced and usually can be discovered early in the case by reviewing the debtor's schedules and examining the debtor at the meeting of creditors. Since dismissal for substantial abuse has the effect of denying the debtor a discharge in the chapter 7 case based on matters which may be discovered early, a motion to dismiss under § 707(b) is analogous to an objection to discharge pursuant to Rule 4004 and, therefore, should be required to be made within a specified time period. If matters relating to substantial abuse are not discovered within the time period specified in subdivision (e) because of the debtor's false testimony, refusal to obey a court order, fraudulent schedules or other fraud, and the debtor receives a discharge, the debtor's conduct may constitute the basis for revocation of the discharge under § 727(d) and (e) of the Code.

Committee Note to 1993 Amendments

Subdivision (d) is amended to clarify that the date of the filing of a notice of conversion in a chapter 12 or chapter 13 case is treated as the date of the conversion order for the purpose of applying Rule 1019. Other amendments are stylistic and make no substantive change.

Committee Note to 1999 Amendments

Subdivision (b)(3), which provides that notice of dismissal for failure to pay the filing fee shall be sent to all creditors within 30 days after the dismissal, is deleted as unnecessary. Rule 2002(f) provides for notice to creditors of the dismissal of a case.

Rule 2002(a) and this rule currently require notice to all creditors of a hearing on dismissal of a voluntary chapter 7 case for the debtor's failure to file a list of creditors, schedules, and statement of financial affairs within the time provided in § 707(a)(3) of the Code. A new subdivision (c) is added to provide that the United States trustee, who is the only entity with standing to file a motion to dismiss under § 707(a)(3) or § 1307(c)(9), is required to serve the motion on only the debtor, the trustee, and any other entities as the court directs. This amendment, and the amendment to Rule 2002, will have the effect of avoiding the expense of sending notices of the motion to all creditors in a chapter 7 case.

New *subdivision (f)* is the same as current subdivision (d), except that it provides that a motion to suspend all proceedings in a case or to dismiss a case for substantial abuse of chapter 7 under § 707(b) is governed by Rule 9014.

Other amendments to this rule are stylistic or for clarification.

Committee Note to 2000 Amendments

This rule is amended to permit the court to grant a timely request filed by the United States trustee for an extension of time to file a motion to dismiss a chapter 7 case under § 707(b), whether the court rules on the request before or after the expiration of the 60-day period.

Rule 1018**CONTESTED INVOLUNTARY PETITIONS; CONTESTED PETITIONS COMMENCING ANCILLARY CASES; PROCEEDINGS TO VACATE ORDER FOR RELIEF; APPLICABILITY OF RULES IN PART VII GOVERNING ADVERSARY PROCEEDINGS**

The following rules in Part VII apply to all proceedings relating to a contested involuntary petition, to proceedings relating to a contested petition commencing a case ancillary to a foreign proceeding, and to all proceedings to vacate an order for relief: Rules 7005, 7008–7010, 7015, 7016, 7024–7026, 7028–7037, 7052, 7054, 7056, and 7062, except as otherwise provided in Part I of these rules and unless the court otherwise directs. The court may direct that other rules in Part VII shall also apply. For the purposes of this rule a reference in the Part VII rules to adversary proceedings shall be read as a reference to proceedings relating to a contested involuntary petition, or contested ancillary petition, or proceedings to vacate an order for relief. Reference in the Federal Rules of Civil Procedure to the complaint shall be read as a reference to the petition.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Applicability of this rule to involuntary case ancillary to foreign proceeding, see rule 1003.
Effect of amendment of Federal Rules of Civil Procedure, see rule 9032.

Library References:

C.J.S. Bankruptcy §§ 39, 60-63.
West's Key No. Digests, Bankruptcy Ⓒ2294-2297, 2341.

Committee Note

The rules in Part VII to which this rule refers are adaptations of the Federal Rules of Civil Procedure for the purpose of governing the procedure in adversary proceedings in cases under the Code. See the Note accompanying Rule 7001 *infra*. Because of the special need for dispatch and expedition in the determination of the issues in an involuntary petition, see *Acme Harvester Co. v. Beekman Lumber Co.*, 222 U.S. 300, 309 (1911), the objective of some of the Federal Rules of Civil Procedure and their adaptations in Part VII to facilitate the settlement of multiple controversies involving many persons in a single lawsuit is not compatible with the exigencies of bankruptcy administration. See *United States F. & G. Co. v. Bray*, 225 U.S. 205, 218 (1912). For that reason Rules 7013, 7014 and 7018-7023 will rarely be appropriate in a proceeding on a contested petition.

Certain terms used in the Federal Rules of Civil Procedure have altered meanings when they are made applicable in cases under the Code by these rules. See Rule 9002 *infra*. This Rule 1018 requires that the terms "adversary proceedings" when used in the rules in Part VII and "complaint" when used in the Federal Rules of Civil Procedure be given altered meanings when they are made applicable to proceedings relating to a contested petition or proceedings to vacate any order for relief. A motion to vacate an order for relief, whether or not made on a petition that was or could have been contested, is governed by the rules in Part VII referred to in this Rule 1018.

Committee Note to 1987 Amendments

Rule 1018 is amended to include within its terms a petition commencing an ancillary case when it is contested. This provision was formerly included in Rule 1003(e)(4).

Although this rule does not contain an explicit authorization for the entry of an order for relief when a debtor refuses to cooperate in discovery relating to a contested involuntary petition, the court has ample power under Rule 37(b) F.R.Civ.P., as incorporated by Rule 7037, to enter an order for relief under appropriate circumstances. Rule 37(b) authorizes the court to enter judgment by default or an order that "facts shall be taken as established."

Rule 1019

CONVERSION OF CHAPTER 11 REORGANIZATION CASE, CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT CASE, OR CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE TO CHAPTER 7 LIQUIDATION CASE

When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case:

(1) Filing of Lists, Inventories, Schedules, Statements.

(A) Lists, inventories, schedules, and statements of financial affairs theretofore filed shall be deemed to be filed in the chapter 7 case, unless the court directs otherwise. If they have not been previously filed, the debtor shall comply with Rule 1007 as if an order for relief had been entered on an involuntary petition on the date of the entry of the order directing that the case continue under chapter 7.

(B) If a statement of intention is required, it shall be filed within 30 days after entry of the order of conversion or before the first date set for the meeting of creditors, whichever is earlier. The court may grant an extension of time for cause only on written motion filed, or oral request made during a hearing, before the time has expired. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.

(2) New Filing Periods. A new time period for filing claims, a complaint objecting to discharge, or a complaint to obtain a determination of dischargeability of any debt shall commence pursuant to Rules 3002, 4004, or 4007, provided that a new time period shall not commence if a chapter 7 case had been converted to a chapter 11, 12, or 13 case and thereafter reconverted to a chapter 7 case and the time for filing claims, a complaint objecting to discharge, or a complaint to obtain a determination of the dischargeability of any debt, or any extension thereof, expired in the original chapter 7 case.

(3) Claims Filed Before Conversion. All claims actually filed by a creditor before conversion of the case are deemed filed in the chapter 7 case.

(4) Turnover of Records and Property. After qualification of, or assumption of duties by the chapter 7 trustee, any debtor in possession or trustee previously acting in the chapter 11, 12, or 13 case shall, forthwith, unless otherwise ordered, turn over to the chapter 7 trustee all records and property of the estate in the possession or control of the debtor in possession or trustee.

(5) Filing Final Report and Schedule of Postpetition Debts.

(A) *Conversion of Chapter 11 or Chapter 12 Case.* Unless the court directs otherwise, if a chapter 11 or chapter 12 case is converted to chapter 7, the debtor in possession or, if the debtor is not a debtor in possession, the trustee serving at the time of conversion, shall:

(i) not later than 15 days after conversion of the case, file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and

(ii) not later than 30 days after conversion of the case, file and transmit to the United States trustee a final report and account;

(B) *Conversion of Chapter 13 Case.* Unless the court directs otherwise, if a chapter 13 case is converted to chapter 7,

(i) the debtor, not later than 15 days after conversion of the case, shall file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and

(ii) the trustee, not later than 30 days after conversion of the case, shall file and transmit to the United States trustee a final report and account;

(C) *Conversion After Confirmation of a Plan.* Unless the court orders otherwise, if a chapter 11, chapter 12, or chapter 13 case is converted to chapter 7 after confirmation of a plan, the debtor shall file:

(i) a schedule of property not listed in the final report and account acquired after the filing of the petition but before conversion, except if the case is converted from chapter 13 to chapter 7 and § 348(f)(2) does not apply;

(ii) a schedule of unpaid debts not listed in the final report and account incurred after confirmation but before the conversion; and

(iii) a schedule of executory contracts and unexpired leases entered into or assumed after the filing of the petition but before conversion.

(D) *Transmission to United States Trustee.* The clerk shall forthwith transmit to the United States trustee a copy of every schedule filed pursuant to Rule 1019(5).

(6) Postpetition Claims; Preconversion Administrative Expenses; Notice. A request for payment of an administrative expense incurred before conversion of the case is timely filed under § 503(a) of the Code if it is filed before conversion or a time fixed by the court. If the request is filed by a governmental unit, it is timely if it is filed before conversion or within the later of a time fixed by the court or 180 days after the date of the conversion. A claim of a kind specified in § 348(d) may be filed in accordance with Rules 3001(a)-(d) and 3002. Upon the filing of the schedule of unpaid debts incurred after commencement of the case and before conversion, the clerk, or some other person as the court may direct, shall give notice to those entities listed on the schedule of the time for filing a request for payment of an administrative expense and, unless a notice of insufficient assets to pay a dividend is mailed in accordance with Rule 2002(e), the time for filing a claim of a kind specified in § 348(d).

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 29, 1999, eff. Dec. 1, 1999.

Cross References

Appointment of interim trustee, see rule 2001.

Election of trustee, see § 702 of this title.

Enlargement of twenty-day period for notice of order of conversion to liquidation case not permitted, see rule 9006.

Failure to effect plan or substantial consummation of confirmed plan, see § 1112 of this title.

Meeting of creditors or equity security holders, see rule 2003.

Library References:

C.J.S. Bankruptcy §§ 377-380, 418, 436, 437.

West's Key No. Digests, Bankruptcy ☞3591(1)-3594, 3673, 3716.10-3716.20(12), 3717.

Committee Note

This rule is derived from former Bankruptcy Rule 122 and implements § 348 of the Code. The rule applies to proceedings in a chapter 7 case following supersession of a case commenced under chapter 11 or 13, whether the latter was initiated by an original petition or was converted from a pending chapter 7 or another chapter case. The rule is not intended to invalidate any action taken in the superseded case before its conversion to chapter 7.

Paragraph (1). If requirements applicable in the superseded case respecting the filing of schedules of debts and property, or lists of creditors and inventory, and of statements of financial affairs have been complied with before the order directing conversion to liquidation, these documents will ordinarily provide all the information about the debts, property, financial affairs, and contracts of the debtor needed for the administration of the estate. If the information submitted in the superseded case is inadequate for the purposes of administration, however, the court may direct the preparation of further informational material and the manner and time of its submission pursuant to paragraph (1). If no schedules, lists, inventories, or statements were filed in the superseded case, this paragraph imposes the duty on the debtor to file schedules and a statement of affairs pursuant to Rule 1007 as if an involuntary petition had been filed on the date when the court directed the conversion of the case to a liquidation case.

Paragraphs (2) and (3). Paragraph (2) requires notice to be given to all creditors of the order of conversion. The notice is to be included in the notice of the meeting of creditors and Official Form No. 16 may be adapted for use. A meeting of creditors may have been held in the superseded case as required by § 341(a) of the Code but that would not dispense with the need to hold one in the ensuing liquidation case. Section 701(a) of the Code permits the court to appoint the trustee acting in the chapter 11 or 13 case as interim trustee in the chapter 7 case. Section 702(a) of the Code allows creditors to elect a trustee but only at the meeting of creditors held under § 341. The right to elect a trustee is not lost because the chapter 7 case follows a chapter 11 or 13 case. Thus a meeting of creditors is necessary. The date fixed for the meeting of creditors will control at least the time for filing claims pursuant to Rule 3002(c). That time will remain applicable in the ensuing chapter 7 case except as paragraph (3) provides, if that time had expired in an earlier chapter 7 case which was converted to the chapter 11 or 13 case, it is not revived in the subsequent chapter 7 case. The same is true if the time for filing a complaint objecting to discharge or to determine nondischargeability of a debt had expired. Paragraph (3), however, recognizes that such time may be extended by the court under rule 4004 or 4007 on motion made within the original prescribed time.

Paragraph (4) renders it unnecessary to file anew claims that had been filed in the chapter 11 or 13 case before conversion to chapter 7.

Paragraph (5) contemplates that typically, after the court orders conversion of a chapter case to liquidation, a trustee under chapter 7 will forthwith take charge of the property of the estate and proceed expeditiously to

liquidate it. The court may appoint the interim trustee in the chapter 7 case pursuant to § 701(a) of the Code. If creditors do not elect a trustee under § 702, the interim trustee becomes the trustee.

Paragraph (6) requires the trustee or debtor in possession acting in the chapter 11 or 13 case to file a final report and schedule of debts incurred in that case. This schedule will provide the information necessary for giving the notice required by paragraph (7) of the rule.

Paragraph (7) requires that claims that arose in the chapter 11 or 13 case be filed within 60 days after entry of the order converting the case to one under chapter 7. Claims not scheduled pursuant to paragraph (6) of the rule or arising from the rejection of an executory contract entered into during the chapter case may be filed within a time fixed by the court. Pursuant to § 348(c) of the Code, the conversion order is treated as the order for relief to fix the time for the trustee to assume or reject executory contracts under § 365(d).

Paragraph (8) permits the extension of the time for filing claims when claims are not timely filed but only with respect to any surplus that may remain in the estate. See also § 726(a)(2)(C) and (3) of the Code.

Committee Note to 1987 Amendments

Paragraph (1) is amended to provide for the filing of a statement of intention in a case converted to chapter 7. Paragraph (1)(B) is added to provide for the filing of the statement of intention when a case is converted to chapter 7. The time for filing the statement of intention and for an extension of that time is governed by § 521(2)(A) of the Code. An extension of time for other required filings is governed by Rule 1007(c), which paragraph (1)(A) incorporates by reference. Because of the amendment to Rule 1007(c), the filing of new lists, schedules, and statements is now governed exclusively by Rule 1019(1).

Paragraph (3) of the rule is expanded to include the effect of conversion of a chapter 11 or 13 case to a chapter 7 case. On conversion of a case from chapter 11 or 13 to a chapter 7 case, parties have a new period within which to file claims or complaints relating to the granting of the discharge or the dischargeability of a debt. This amendment is consistent with the holding and reasoning of the court in *F & M Marquette Nat'l Bank v. Richards*, 780 F.2d 24 (8th Cir. 1985).

Paragraph (4) is amended to deal directly with the status of claims which are properly listed on the schedules filed in a chapter 11 case and deemed filed pursuant to § 1111(a) of the Code. Section 1111(a) is only applicable to the chapter 11 case. On conversion of the chapter 11 case to a chapter 7 case, paragraph (4) governs the status of claims filed in the chapter 11 case. The Third Circuit properly construed paragraph (4) as applicable to claims deemed filed in the superseded chapter 11 case. *In re Crouthamel Potato Chip Co.*, 786 F.2d 141 (3d Cir. 1986).

The amendment to paragraph (4) changes that result by providing that only claims that are actually filed in the chapter 11 case are treated as filed in the superseding chapter 7 case. When chapter 11 cases are converted to chapter 7 cases, difficulties in obtaining and verifying the debtors' records are common. It is unfair to the chapter 7 trustee and creditors to require that they be bound by schedules which may not be subject to verification.

Paragraph (6) is amended to place the obligation on the chapter 13 debtor to file a schedule of unpaid debts incurred during the superseded chapter 13 case.

Committee Note to 1991 Amendments

This rule is amended to include conversion of a case from chapter 12 to chapter 7 and to implement the United States trustee system.

The amendments to paragraph (1)(A) are stylistic. Reference to the statement of executory contracts is deleted to conform to the amendment to Rule 1007(b)(1) which changes the statement to a schedule of executory contracts and unexpired leases.

Paragraph (1)(B) is amended to enable the United States trustee to monitor the progress of the case and to take appropriate action to enforce the debtor's obligation to perform the statement of intention in a timely manner.

Paragraph (2) is deleted because notice of conversion of the case is required by Rules 1017(d), 2002(f)(2), and 9022. The United States trustee, who supervises trustees pursuant to 28 U.S.C. § 586(a), may give notice of the conversion to the trustee in the superseded case.

Paragraph (6), renumbered as paragraph (5), is amended to reduce to 15 days the time for filing a schedule of postpetition debts and requires inclusion of the name and address of each creditor in connection with the postpetition debt. These changes will enable the clerk to send postpetition creditors a timely notice of the meeting of creditors held pursuant to § 341(a) of the Code. The amendments to this paragraph also provide the United States trustee with the final report and account of the superseded case, and with a copy of every schedule filed after conversion of the case. Conversion to chapter 7 terminates the service of the trustee in the superseded case pursuant to § 348(e) of the Code. Sections 704(a)(9), 1106(a)(1), 1107(a), 1202(b)(1), 1203 and 1302(b)(1) of the Code require the trustee or debtor in possession to file a final report and account with the court and the United States trustee. The words "with the court" are deleted as unnecessary. See Rules 5005(a) and 9001(3).

Paragraph (7), renumbered as paragraph (6), is amended to conform the time for filing postpetition claims to the time for filing prepetition claims pursuant to paragraph (3) (renumbered as paragraph (2)) of this rule and Rule 3002(c). This paragraph is also amended to eliminate the need for a court order to provide notice of the time for filing claims. It is anticipated that this notice will be given together with the notice of the meeting of creditors. It is amended further to avoid the need to fix a time for filing claims arising under § 365(d) if it is a no asset case upon conversion. If assets become available for distribution, the court may fix a time for filing such claims pursuant to Rule 3002(c)(4).

The additions of references to unexpired leases in paragraph (1)(A) and in paragraphs (6) and (7) (renumbered as paragraphs (5) and (6)) are technical amendments to clarify that unexpired leases are included as well as other executory contracts.

Committee Note to 1996 Amendments

Subdivision (7) is abrogated to conform to the abrogation of Rule 3002(c)(6).

Committee Note to 1997 Amendments

The amendments to subdivisions (3) and (5) are technical corrections and stylistic changes. The phrase “superseded case” is deleted because it creates the erroneous impression that conversion of a case results in a new case that is distinct from the original case. Similarly, the phrase “original petition” is deleted because it erroneously implies that there is a second petition with respect to a converted case. See § 348 of the Code.

Committee Note to 1999 Amendments

Paragraph (1)(B) is amended to clarify that a motion for an extension of time to file a statement of intention must be made by written motion filed before the time expires, or by oral request made at a hearing before the time expires.

Subdivision (6) is amended to provide that a holder of an administrative expense claim incurred after the commencement of the case, but before conversion to chapter 7, is required to file a request for payment under § 503(a) within a time fixed by the court, rather than a proof of claim under § 501 and Rules 3001(a)-(d) and 3002. The 180-day period applicable to governmental units is intended to conform to § 502(b)(9) of the Code and Rule 3002(c)(1). It is unnecessary for the court to fix a time for filing requests for payment if it appears that there are not sufficient assets to pay preconversion administrative expenses. If a time for filing a request for payment of an administrative expense is fixed by the court, it may be enlarged as provided in Rule 9006(b). If an administrative expense claimant fails to timely file the request, it may be tardily filed under § 503(a) if permitted by the court for cause.

The final sentence of Rule 1019(6) is deleted because it is unnecessary in view of the other amendments to this paragraph. If a party has entered into a postpetition contract or lease with the trustee or debtor that constitutes an administrative expense, a timely request for payment must be filed in accordance with this paragraph and § 503(b) of the Code. The time for filing a proof of claim in connection with the rejection of any other executory contract or unexpired lease is governed by Rule 3002(c)(4).

The phrase “including the United States, any state, or any subdivision thereof” is deleted as unnecessary. Other amendments to this rule are stylistic.

Rule 1020**ELECTION TO BE CONSIDERED A SMALL BUSINESS
IN A CHAPTER 11 REORGANIZATION CASE**

In a chapter 11 reorganization case, a debtor that is a small business may elect to be considered a small business by filing a written statement of election not later than 60 days after the date of the order for relief.

[Adopted Apr. 11, 1997, eff. Dec. 1, 1997.]

Committee Note

This rule is designed to implement §§ 1121(e) and 1125(f) that were added to the Code by the Bankruptcy Reform Act of 1994.

PART II

OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS

Rule

- 2001. Appointment of Interim Trustee Before Order for Relief in a Chapter 7 Liquidation Case
- 2002. Notices to Creditors, Equity Security Holders, United States, and United States Trustee
- 2003. Meeting of Creditors or Equity Security Holders
- 2004. Examination
- 2005. Apprehension and Removal of Debtor to Compel Attendance for Examination
- 2006. Solicitation and Voting of Proxies in Chapter 7 Liquidation Cases
- 2007. Review of Appointment of Creditors' Committee Organized Before Commencement of the Case
- 2007.1 Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case
- 2008. Notice to Trustee of Selection
- 2009. Trustees for Estates When Joint Administration Ordered
- 2010. Qualification by Trustee; Proceeding on Bond
- 2011. Evidence of Debtor in Possession or Qualification of Trustee
- 2012. Substitution of Trustee or Successor Trustee; Accounting
- 2013. Public Record of Compensation Awarded to Trustees, Examiners, and Professionals
- 2014. Employment of Professional Persons
- 2015. Duty to Keep Records, Make Reports, and Give Notice of Case
- 2016. Compensation for Services Rendered and Reimbursement of Expenses
- 2017. Examination of Debtor's Transactions With Debtor's Attorney
- 2018. Intervention; Right to Be Heard
- 2019. Representation of Creditors and Equity Security Holders in Chapter 9 Municipality and Chapter 11 Reorganization Cases
- 2020. Review of Acts by United States Trustee

Rule 2001

APPOINTMENT OF INTERIM TRUSTEE BEFORE ORDER FOR RELIEF IN A CHAPTER 7 LIQUIDATION CASE

(a) Appointment. At any time following the commencement of an involuntary liquidation case and before an order for relief, the court on written motion of a party in interest may order the appointment of an interim trustee under § 303(g) of the Code. The motion shall set forth the necessity for the appointment and may be granted only after hearing on notice to the debtor, the petitioning creditors, the United States trustee, and other parties in interest as the court may designate.

(b) Bond of Movant. An interim trustee may not be appointed under this rule unless the movant furnishes a bond in an amount approved by the court, conditioned to indemnify the debtor for costs, attorney's fee, expenses, and damages allowable under § 303(i) of the Code.

(c) Order of Appointment. The order directing the appointment of an interim trustee shall state the reason the appointment is necessary and shall specify the trustee's duties.

(d) Turnover and Report. Following qualification of the trustee selected under § 702 of the Code, the interim trustee, unless otherwise ordered, shall (1) forthwith deliver to the trustee all the records and property of the estate in possession or subject to control of the interim trustee and, (2) within 30 days thereafter file a final report and account.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Duty to keep and file records and reports, see rule 2015.

Interim trustee, see § 701 of this title.

Motions; form and service, see rule 9013.

Security; proceedings against sureties, see rule 9025.

Library References:

C.J.S. Bankruptcy § 195.

West's Key No. Digests, Bankruptcy ☞3002.

Committee Note

This rule is adapted from former Bankruptcy Rule 201. See also former Chapter X Rule 10-201. In conformity with title 11 of the United States Code, this rule substitutes "interim trustee" for "receiver." Subdivision (a) and (e) of Rule 201 are not included because the provisions contained therein are found in detail in § 303(g) of the Code, or they are inconsistent with § 701 of the Code. Similarly, the provisions in Rule 201(d) relating to a debtor's counterbond are not included because of their presence in § 303(g).

Subdivision (a) makes it clear that the court may not on its own motion order the appointment of an interim trustee before an order for relief is entered. Appointment may be ordered only on motion of a party in interest.

Subdivision (b) requires those seeking the appointment of an interim trustee to furnish a bond. The bond may be the same one required of petitioning creditors under § 303(e) of the Code to indemnify the debtor for damages allowed by the court under § 303(i).

Subdivision (c) requires that the order specify which duties enumerated in § 303(g) shall be performed by the interim trustee. Reference should be made to Rule 2015 for additional duties required of an interim trustee including keeping records and filing periodic reports with the court.

Subdivision (d) requires turnover of records and property to the trustee selected under § 702 of the Code, after qualification. That trustee may be the interim trustee who becomes the trustee because of the failure of creditors to elect one under § 702(d) or the trustee elected by creditors under § 702(b), (c).

Committee Note to 1991 Amendments

This rule is amended to conform to § 303(g) of the Code which provides that the United States trustee appoints the interim trustee. See Rule X-1003. This rule does not apply to the exercise by the court of the power to act sua sponte pursuant to § 105(a) of the Code.

Rule 2002

**NOTICES TO CREDITORS, EQUITY SECURITY HOLDERS,
UNITED STATES, AND UNITED STATES TRUSTEE**

(a) Twenty-Day Notices to Parties in Interest. Except as provided in subdivisions (h), (i), and (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 20 days' notice by mail of:

(1) the meeting of creditors under § 341 or § 1104(b) of the Code;

(2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice;

(3) the hearing on approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent;

(4) in a chapter 7 liquidation, a chapter 11 reorganization case, or a chapter 12 family farmer debt adjustment case, the hearing on the dismissal of the case or the conversion of the case to another chapter, unless the hearing is under § 707(a)(3) or § 707(b) or is on dismissal of the case for failure to pay the filing fee;

(5) the time fixed to accept or reject a proposed modification of a plan;

(6) a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000;

(7) the time fixed for filing proofs of claims pursuant to Rule 3003(c); and

(8) the time fixed for filing objections and the hearing to consider confirmation of a chapter 12 plan.

(b) Twenty-Five-Day Notices to Parties in Interest. Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 25 days notice by mail of (1) the time fixed for filing objections and the hearing to consider approval of a disclosure statement; and (2) the time fixed for filing objections and the hearing to consider confirmation of a chapter 9, chapter 11, or chapter 13 plan.

(c) Content of Notice.

(1) *Proposed Use, Sale, or Lease of Property.* Subject to Rule 6004 the notice of a proposed use, sale, or lease of property required by subdivision (a)(2) of this rule shall include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections. The notice of a proposed use, sale, or lease of property, including real estate, is sufficient if it generally describes the property.

(2) *Notice of Hearing on Compensation.* The notice of a hearing on an application for compensation or reimbursement of expenses required by subdivision (a)(6) of this rule shall identify the applicant and the amounts requested.

*[Text of paragraph (3) effective December 1, 2001,
absent contrary Congressional action.]*

(3) *Notice of Hearing on Confirmation When Plan Provides for an Injunction.* If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the notice required under Rule 2002(b)(2) shall:

(A) include in conspicuous language (bold, italic, or underlined text) a statement that the plan proposes an injunction;

(B) describe briefly the nature of the injunction; and

(C) identify the entries that would be subject to the injunction.

(d) Notice to Equity Security Holders. In a chapter 11 reorganization case, unless otherwise ordered by the court, the clerk, or some other person as the court may direct, shall in the manner and form directed by the court give notice to all equity security holders of (1) the order for relief; (2) any meeting of equity security holders held pursuant to § 341 of the Code; (3) the hearing on the proposed sale of all or substantially all of the debtor's assets; (4) the hearing on the dismissal or conversion of a case to another chapter; (5) the time fixed for filing objections to and the hearing to consider approval of a disclosure statement; (6) the time fixed for filing objections to and the hearing to consider confirmation of a plan; and (7) the time fixed to accept or reject a proposed modification of a plan.

(e) Notice of No Dividend. In a chapter 7 liquidation case, if it appears from the schedules that there are no assets from which a dividend can be paid, the notice of the meeting of creditors may include a statement to that effect; that it is unnecessary to file claims; and that if sufficient assets become available for the payment of a dividend, further notice will be given for the filing of claims.

(f) Other Notices. Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, all creditors, and indenture trustees notice by mail of: (1) the order for relief; (2) the dismissal or the conversion of the case to another chapter, or the suspension of proceedings under § 305; (3) the time allowed for filing claims pursuant to Rule 3002; (4) the time fixed for filing a complaint objecting to the debtor's discharge pursuant to § 727 of the Code as provided in Rule 4004; (5) the time fixed for filing a complaint to determine the dischargeability of a debt pursuant to § 523 of the Code as provided in Rule 4007; (6) the waiver, denial, or revocation of a discharge as provided in Rule 4006; (7) entry of an order confirming a chapter 9, 11, or 12 plan; and (8) a summary of the trustee's final report in a chapter 7 case if the net proceeds realized exceed \$1,500. Notice of the time fixed for accepting or rejecting a plan pursuant to Rule 3017(c) shall be given in accordance with Rule 3017(d).

*[Text of paragraph (g) effective until December 1, 2001,
absent contrary Congressional action. See, also,
text of revised paragraph (g), post.]*

(g) Addresses of Notices. All notices required to be mailed under this rule to a creditor, equity security holder, or indenture trustee shall be addressed as such entity or an authorized agent may direct in a filed request; otherwise, to the address shown in the list of creditors or the schedule whichever is filed later. If a

different address is stated in a proof of claim duly filed, that address shall be used unless a notice of no dividend has been given.

[Text of paragraph (g) effective December 1, 2001, absent contrary Congressional action. See, also, text of former paragraph (g), ante.]

(g) Addressing Notices.

(1) Notices required to be mailed under Rule 2002 to a creditor, indenture trustee, or equity security holder shall be addressed as such entity or an authorized agent has directed in its last request filed in the particular case. For the purposes of this subdivision:

(A) a proof of claim filed by a creditor or indenture trustee that designates a mailing address constitutes a filed request to mail notices to that address, unless a notice of no dividend has been given under Rule 2002(e) and a later notice of possible dividend under Rule 3002(c)(5) has not been given; or

(B) a proof of interest filed by an equity security holder that designates a mailing address constitutes a filed request to mail notices to that address.

(2) If a creditor or indenture trustee has not filed a request designating a mailing address under Rule 2002(g)(1), the notices shall be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request designating a mailing address under Rule 2002(g)(1), the notices shall be mailed to the address shown on the list of equity security holders.

(3) If a list or schedule filed under Rule 1007 includes the name and address of a legal representative of an infant or incompetent person, and a person other than that representative files a request or proof of claim designating a name and mailing address that differs from the name and address of the representative included in the list or schedule, unless the court orders otherwise, notices under Rule 2002 shall be mailed to the representative included in the list or schedules and to the name and address designated in the request or proof of claim.

(h) Notices to Creditors Whose Claims Are Filed. In a chapter 7 case, after 90 days following the first date set for the meeting of creditors under § 341 of the Code, the court may direct that all notices required by subdivision (a) of this rule be mailed only to the debtor, the trustee, all indenture trustees, creditors that hold claims for which proofs of claim have been filed, and creditors, if any, that are still permitted to file claims by reason of an extension granted pursuant to Rule 3002(c)(1) or (c)(2). In a case where notice of insufficient assets to pay a dividend has been given to creditors pursuant to subdivision (e) of this rule, after 90 days following the mailing of a notice of the time for filing claims pursuant to Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence.

(i) Notices to Committees. Copies of all notices required to be mailed pursuant to this rule shall be mailed to the committees elected under § 705 or appointed under § 1102 of the Code or to their authorized agents. Notwithstanding the foregoing subdivisions, the court may order that notices required by subdivision (a)(2), (3) and (6) of this rule be transmitted to the United States trustee and be mailed only to the committees elected under § 705 or appointed under § 1102 of the Code or to their authorized agents and to the creditors and

equity security holders who serve on the trustee or debtor in possession and file a request that all notices be mailed to them. A committee appointed under § 1114 shall receive copies of all notices required by subdivisions (a)(1), (a)(5), (b), (f)(2), and (f)(7), and such other notices as the court may direct.

(j) Notices to the United States. Copies of notices required to be mailed to all creditors under this rule shall be mailed (1) in a chapter 11 reorganization case, to the Securities and Exchange Commission at any place the Commission designates, if the Commission has filed either a notice of appearance in the case or a written request to receive notices; (2) in a commodity broker case, to the Commodity Futures Trading Commission at Washington, D.C.; (3) in a chapter 11 case to the District Director of Internal Revenue for the district in which the case is pending; (4) if the papers in the case disclose a debt to the United States other than for taxes, to the United States attorney for the district in which the case is pending and to the department, agency, or instrumentality of the United States through which the debtor became indebted; or if the filed papers disclose a stock interest of the United States, to the Secretary of the Treasury at Washington, D.C.

(k) Notices to United States Trustee. Unless the case is a chapter 9 municipality case or unless the United States trustee requests otherwise, the clerk, or some other person as the court may direct, shall transmit to the United States trustee notice of the matters described in subdivisions (a)(2), (a)(3), (a)(4), (a)(8), (b), (f)(1), (f)(2), (f)(4), (f)(6), (f)(7), and (f)(8) of this rule and notice of hearings on all applications for compensation or reimbursement of expenses. Notices to the United States trustee shall be transmitted within the time prescribed in subdivision (a) or (b) of this rule. The United States trustee shall also receive notice of any other matter if such notice is requested by the United States trustee or ordered by the court. Nothing in these rules requires the clerk or any other person to transmit to the United States trustee any notice, schedule, report, application or other document in a case under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq.

(l) Notice by Publication. The court may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice.

(m) Orders Designating Matter of Notices. The court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules.

(n) Caption. The caption of every notice given under this rule shall comply with Rule 1005. The caption of every notice required to be given by the debtor to a creditor shall include the information required to be in the notice by § 342(c) of the Code.

(o) Notice of Order for Relief in Consumer Case. In a voluntary case commenced by an individual debtor whose debts are primarily consumer debts, the clerk or some other person as the court may direct shall give the trustee and all creditors notice by mail of the order for relief within 20 days from the date thereof.

Amended by Pub.L. 98-353, § 321, July 10, 1984, 98 Stat. 333; amended by Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff.

Aug. 1, 1993; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 1, 1997, eff. Dec. 1, 1997; Apr. 29, 1999, eff. Dec. 1, 1999; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 24, 2001, eff. Dec. 1, 2001, absent contrary Congressional action.

Cross References

- Form and manner of publication of notices, see rule 9008.
- General requirements of form for creditors' notices, see rule 9004.
- Hearing on disclosure statement in municipality debt adjustment and reorganization cases, see rule 3017.
- Notice by mail complete on mailing, see rule 9006.
- Notice of—
 - Dismissal for failure to pay filing fees, see rule 1017.
 - Dividend and of time to file proof of claim in liquidation case, see rule 3002.
 - Hearing on compromise or settlement to creditors, debtors, indenture trustees, and others designated by court, see rule 9019.
 - Hearing on confirmation of individual debt adjustment plan to include plan or summary, see rule 3015.
 - Hearing on dismissal of case, see rule 1017.
 - Order of conversion to liquidation case, see rule 1019.
 - Time extended to file claims against surplus in converted liquidation case, see rule 1019.
 - Time fixed for filing complaint objecting to discharge in reorganization case, see rule 4004.
 - Time fixed for filing complaint to determine debt's dischargeability, see rule 4007.
 - Use, sale or lease of property other than in ordinary course, see rule 6004.
 - Waiver, denial, or revocation of discharge, see rule 4006.
 - Reduction in time periods generally, see rule 9006.
- Reduction in twenty-day period for notice to file claims not permitted—
 - Against surplus in estate in liquidation case, see rule 9006.
 - In municipality debt adjustment or reorganization cases, see rule 9006.
 - Review by court on plan's confirmation after notice and hearing pursuant to this rule, see rule 3020.

Library References:

- C.J.S. Bankruptcy §§ 30, 275.
- West's Key No. Digests, Bankruptcy ☞2131, 2900(2).

Official Forms

- Order for meeting of creditors and related orders, combined with notice thereof and of automatic stay, see form 9.

Committee Note

Some of the notices required by this rule may be given either by the clerk or as the court may otherwise direct. For example, the court may order the trustee or debtor in possession to transmit one or more of the notices required by this rule, such as, notice of a proposed sale of property. See § 363(b) of the Code. When publication of notices is required or desirable, reference should be made to Rule 9008.

Notice of the order for relief is required to be given by § 342 of the Code and by subdivision (f)(1) of this rule. That notice may be combined with the notice of the meeting of creditors as indicated in Official Form No. 16, the notice and order of the meeting of creditors.

Subdivision (a) sets forth the requirement that 20 days notice be given of the significant events in a case under the Bankruptcy Code. The former Act and Rules provided a ten day notice in bankruptcy and Chapter XI cases, and

a 20 day notice in a Chapter X case. This rule generally makes uniform the 20 day notice provision except that subdivision (b) contains a 25 day period for certain events in a chapter 9, 11, or 13 case. Generally, Rule 9006 permits reduction of time periods. Since notice by mail is complete on mailing, the requirement of subdivision (a) is satisfied if the notices are deposited in the mail at least 20 days before the event. See Rule 9006(e). The exceptions referred to in the introductory phrase include the modifications in the notice procedure permitted by subdivision (h) as to non-filing creditors, subdivision (i) as to cases where a committee is functioning, and subdivision (k) where compliance with subdivision (a) is impracticable.

The notice of a proposed sale affords creditors an opportunity to object to the sale and raise a dispute for the court's attention. Section 363(b) of the Code permits the trustee or debtor in possession to sell property, other than in the ordinary course of business, only after notice and hearing. If no objection is raised after notice, § 102(1) provides that there need not be an actual hearing. Thus, absent objection, there would be no court involvement with respect to a trustee's sale. Once an objection is raised, only the court may pass on it.

Prior to the Code the court could shorten the notice period for a proposed sale of property or dispense with notice. This subdivision (a), permits the 20 day period to be shortened in appropriate circumstances but the rule does not contain a provision allowing the court to dispense with notice. The rule is thus consistent with the Code, §§ 363(b) and 102(1)(A) of the Code. See 28 U.S.C. § 2075. It may be necessary, in certain circumstances, however, to use a method of notice other than mail. Subdivision (a)(2) vests the court with discretion, on cause shown, to order a different method. Reference should also be made to Rule 6004 which allows a different type of notice of proposed sales when the property is of little value.

Notice of the hearing on an application for compensation or reimbursement of expenses totalling \$100 or less need not be given. In chapter 13 cases relatively small amounts are sometimes allowed for post-confirmation services and it would not serve a useful purpose to require advance notice.

Subdivision (b) is similar to subdivision (a) but lengthens the notice time to 25 days with respect to those events particularly significant in chapter 9, 11 and 13 cases. The additional time may be necessary to formulate objections to a disclosure statement or confirmation of a plan and preparation for the hearing on approval of the disclosure statement or confirmation. The disclosure statement and hearing thereon is only applicable in chapter 9 cases (§ 901(a) of the Code), and chapter 11 cases (§ 1125 of the Code).

Subdivision (c) specifies certain matters that should be included in the notice of a proposed sale of property and notice of the hearing on an application for allowances. Rule 6004 fixes the time within which parties in interest may file objections to a proposed sale of property.

Subdivision (d) relates exclusively to the notices given to equity security holders in chapter 11 cases. Under chapter 11, a plan may impair the interests of the debtor's shareholders or a plan may be a relatively simple restructuring of unsecured debt. In some cases, it is necessary that equity interest holders receive various notices and in other cases there is no purpose to be served. This subdivision indicates that the court is not mandated to order notices but rather that the matter should be treated with some flexibility. The court may decide whether notice is to be given and how it is

to be given. Under § 341(b) of the Code, a meeting of equity security holders is not required in each case, only when it is ordered by the court. Thus subdivision (d)(2) requires notice only when the court orders a meeting.

In addition to the notices specified in this subdivision, there may be other events or matters arising in a case as to which equity security holders should receive notice. These are situations left to determination by the court.

Subdivision (e), authorizing a notice of the apparent insufficiency of assets for the payment of any dividend, is correlated with Rule 3002(c)(5), which provides for the issuance of an additional notice to creditors if the possibility of a payment later materializes.

Subdivision (f) provides for the transmission of other notices to which no time period applies. Clause (1) requires notice of the order for relief; this complements the mandate of § 342 of the Code requiring such notice as is appropriate of the order for relief. This notice may be combined with the notice of the meeting of creditors to avoid the necessity of more than one mailing. See Official Form No. 16, notice of meeting of creditors.

Subdivision (g) recognizes that an agent authorized to receive notices for a creditor may, without a court order, designate where notices to the creditor he represents should be addressed. Agent includes an officer of a corporation, an attorney at law, or an attorney in fact if the requisite authority has been given him. It should be noted that Official Forms Nos. 17 and 18 do not include an authorization of the holder of a power of attorney to receive notices for the creditor. Neither these forms nor this rule carries any implication that such an authorization may not be given in a power of attorney or that a request for notices to be addressed to both the creditor or his duly authorized agent may not be filed.

Subdivision (h). After the time for filing claims has expired in a chapter 7 case, creditors who have not filed their claims in accordance with Rule 3002(c) are not entitled to share in the estate except as they may come within the special provisions of § 726 of the Code or Rule 3002(c)(6). The elimination of notice to creditors who have no recognized stake in the estate may permit economies in time and expense. Reduction of the list of creditors to receive notices under this subdivision is discretionary. This subdivision does not apply to the notice of the meeting of creditors.

Subdivision (i) contains a list of matters of which notice may be given a creditors' committee or to its authorized agent in lieu of notice to the creditors. Such notice may serve every practical purpose of a notice to all the creditors and save delay and expense. *In re Schulte-United, Inc.*, 59 F.2d 553, 561 (8th Cir. 1932).

Subdivision (j). The premise for the requirement that the district director of internal revenue receive copies of notices that all creditors receive in a chapter 11 case is that every debtor is potentially a tax debtor of the United States. Notice to the district director alerts him to the possibility that a tax debtor's estate is about to be liquidated or reorganized and that the debtor may be discharged. When other indebtedness to the United States is indicated, the United States attorney is notified as the person in the best position to protect the interests of the government. In addition, the provision requires notice by mail to the head of any department, agency, or instrumentality of the United States through whose action the debtor became indebted to the United States. This rule is not intended to preclude a local rule from

requiring a state or local tax authority to receive some or all of the notices to creditors under these rules.

Subdivision (k) specifies two kinds of situations in which notice by publication may be appropriate: (1) when notice by mail is impracticable; and (2) when notice by mail alone is less than adequate. Notice by mail may be impracticable when, for example, the debtor has disappeared or his records have been destroyed and the names and addresses of his creditors are unavailable, or when the number of creditors with nominal claims is very large and the estate to be distributed may be insufficient to defray the costs of issuing the notices. Supplementing notice by mail is also indicated when the debtor's records are incomplete or inaccurate and it is reasonable to believe that publication may reach some of the creditors who would otherwise be missed. Rule 9008 applies when the court directs notice by publication under this rule. Neither clause (2) of subdivision (a) nor subdivision (k) of this rule is concerned with the publication of advertisement to the general public of a sale of property of the estate at public auction under Rule 6004(b). See 3 Collier, *Bankruptcy* 522-23 (14th ed. 1971); 4B *id.* 1165-67 (1967); 2 *id.* ¶ 363.03 (15th ed. 1981).

Subdivision (m). Inclusion in notices to creditors of information as to other names used by the debtor as required by Rule 1005 will assist them in the preparation of their proofs of claim and in deciding whether to file a complaint objecting to the debtor's discharge. Additional names may be listed by the debtor on his statement of affairs when he did not file the petition. The mailing of notices should not be postponed to await a delayed filing of the statement of financial affairs.

Committee Note to 1987 Amendments

Subdivision (a) is amended to provide that notice of a hearing on an application for compensation must be given only when the amount requested is in excess of \$500.

Subdivision (d). A new notice requirement is added as clause (3). When a proposed sale is of all or substantially all of the debtor's assets, it is appropriate that equity security holders be given notice of the proposed sale. The clauses of subdivision (d) are renumbered to accommodate this addition.

Subdivision (f). Clause (7) is eliminated. Mailing of a copy of the discharge order is governed by Rule 4004(g).

Subdivision (g) is amended to relieve the clerk of the duty to mail notices to the address shown in a proof of claim when a notice of no dividend has been given pursuant to Rule 2002. This amendment avoids the necessity of the clerk searching proofs of claim which are filed in no dividend cases to ascertain whether a different address is shown.

Subdivision (n) was enacted by § 321 of the 1984 amendments.

Committee Note to 1991 Amendments

Subdivision (a)(3) is amended to exclude compromise or settlement agreements concerning adequate protection or which modify or terminate the automatic stay, provide for use of cash collateral, or create a senior or equal lien on collateral to obtain credit. Notice requirements relating to approval of such agreements are governed by Rule 4001(d).

Subdivision (a)(5) is amended to include a hearing on dismissal or conversion of a chapter 12 case. This subdivision does not apply when a hearing is not required. It is also amended to avoid the necessity of giving notice to all creditors of a hearing on the dismissal of a consumer debtor's case based on substantial abuse of chapter 7. Such hearings on dismissal under § 707(b) of the Code are governed by Rule 1017(e).

Subdivision (a)(9) is added to provide for notice of the time fixed for filing objections and the hearing to consider confirmation of a plan in a chapter 12 case. Section 1224 of the Code requires "expedited notice" of the confirmation hearing in a chapter 12 case and requires that the hearing be concluded not later than 45 days after the filing of the plan unless the time is extended for cause. This amendment establishes 20 days as the notice period. The court may shorten this time on its own motion or on motion of a party in interest. The notice includes both the date of the hearing and the date for filing objections, and must be accompanied by a copy of the plan or a summary of the plan in accordance with Rule 3015(d).

Subdivision (b) is amended to delete as unnecessary the references to subdivisions (h) and (i).

Subdivision (d) does not require notice to equity security holders in a chapter 12 case. The procedural burden of requiring such notice is outweighed by the likelihood that all equity security holders of a family farmer will be informed of the progress of the case without formal notice. Subdivision (d) is amended to recognize that the United States trustee may convene a meeting of equity security holders pursuant to § 341(b).

Subdivision (f)(2) is amended and subdivision (f)(4) is deleted to require notice of any conversion of the case, whether the conversion is by court order or is effectuated by the debtor filing a notice of conversion pursuant to §§ 1208(a) or 1307(a). Subdivision (f)(8), renumbered (f)(7), is amended to include entry of an order confirming a chapter 12 plan. Subdivision (f)(9) is amended to increase the amount to \$1,500.

Subdivisions (g) and (j) are amended to delete the words "with the court" and subdivision (i) is amended to delete the words "with the clerk" because these phrases are unnecessary. See Rules 5005(a) and 9001(3).

Subdivision (i) is amended to require that the United States trustee receive notices required by subdivision (a)(2), (3) and (7) of this rule notwithstanding a court order limiting such notice to committees and to creditors and equity security holders who request such notices. Subdivision (i) is amended further to include committees elected pursuant to § 705 of the Code and to provide that committees of retired employees appointed in chapter 11 cases receive certain notices.

Subdivision (k) is derived from Rule X-1008. The administrative functions of the United States trustee pursuant to 28 U.S.C. § 586(a) and standing to be heard on issues under § 307 and other sections of the Code require that the United States trustee be informed of developments and issues in every case except chapter 9 cases. The rule omits those notices described in subdivision (a)(1) because a meeting of creditors is convened only by the United States trustee, and those notices described in subdivision (a)(4) (date fixed for filing claims against a surplus), subdivision (a)(6) (time fixed to accept or reject proposed modification of a plan), subdivision (a)(8) (time fixed for filing proofs of claims in chapter 11 cases), subdivision (f)(3) (time fixed for

filing claims in chapter 7, 12, and 13 cases), and subdivision (f)(5) (time fixed for filing complaint to determine dischargeability of debt) because these notices do not relate to matters that generally involve the United States trustee. Nonetheless, the omission of these notices does not prevent the United States trustee from receiving such notices upon request. The United States trustee also receives notice of hearings on applications for compensation or reimbursement without regard to the \$500 limitation contained in subdivision (a)(7) of this rule. This rule is intended to be flexible in that it permits the United States trustee in a particular judicial district to request notices in certain categories, and to request not to receive notices in other categories, when the practice in that district makes that desirable.

Committee Note to 1993 Amendments

Subdivision (j) is amended to avoid the necessity of sending an additional notice to the Washington, D.C. address of the Securities and Exchange Commission if the Commission prefers to have notices sent only to a local office. This change also clarifies that notices required to be mailed pursuant to this rule must be sent to the Securities and Exchange Commission only if it has filed a notice of appearance or has filed a written request. Other amendments are stylistic and make no substantive change.

Committee Note to 1996 Amendments

Paragraph (a)(4) is abrogated to conform to the abrogation of Rule 3002(c)(6). The remaining paragraphs of subdivision (a) are renumbered, and references to these paragraphs contained in other subdivisions of this rule are amended accordingly.

Paragraph (f)(8) is amended so that a summary of the trustee's final account, which is prepared after distribution of property, does not have to be mailed to the debtor, all creditors, and indenture trustees in a chapter 7 case. Parties are sufficiently protected by receiving a summary of the trustee's final report that informs parties of the proposed distribution of property.

Subdivision (h) is amended (1) to provide that an order under this subdivision may not be issued if a notice of no dividend is given pursuant to Rule 2002(e) and the time for filing claims has not expired as provided in Rule 3002(c)(5); (2) to clarify that notices required to be mailed by subdivision (a) to parties other than creditors must be mailed to those entities despite an order issued pursuant to subdivision (h); (3) to provide that if the court, pursuant to Rule 3002(c)(1) or 3002(c)(2), has granted an extension of time to file a proof of claim, the creditor for whom the extension has been granted must continue to receive notices despite an order issued pursuant to subdivision (h); and (4) to delete references to subdivision (a)(4) and Rule 3002(c)(6), which have been abrogated.

Other amendments to this rule are stylistic.

Committee Note to 1997 Amendments

Paragraph (a)(1) is amended to include notice of a meeting of creditors convened under § 1104(b) of the Code for the purpose of electing a trustee in a chapter 11 case. The court for cause shown may order the 20-day period reduced pursuant to Rule 9006(c)(1).

Subdivision (n) is amended to conform to the 1994 amendment to § 342 of the Code. As provided in § 342(c), the failure of a notice given by the debtor

to a creditor to contain the information required by § 342(c) does not invalidate the legal effect of the notice.

Committee Note to 1999 Amendments

Paragraph (a)(4) is amended to conform to the amendments to Rule 1017. If the United States trustee files a motion to dismiss a case for the debtor's failure to file the list of creditors, schedules, or the statement of financial affairs within the time specified in § 707(a)(3), the amendments to this rule and to Rule 1017 eliminate the requirement that all creditors receive notice of the hearing.

Paragraph (a)(4) is amended further to conform to Rule 1017(b), which requires that notice of the hearing on dismissal of a case for failure to pay the filing fee be served on only the debtor and the trustee.

Paragraph (f)(2) is amended to provide for notice of the suspension of proceedings under § 305.

Committee Note to 2000 Amendments

Paragraph (a)(6) is amended to increase the dollar amount from \$500 to \$1,000. The amount was last amended in 1987, when it was changed from \$100 to \$500. The amendment also clarifies that the notice is required only if a particular entity is requesting more than \$1,000 as compensation or reimbursement of expenses. If several professionals are requesting compensation or reimbursement, and only one hearing will be held on all applications, notice under paragraph (a)(6) is required only with respect to the entities that have requested more than \$1,000. If each applicant requests \$1,000 or less, notice under paragraph (a)(6) is not required even though the aggregate amount of all applications to be considered at the hearing is more than \$1,000.

If a particular entity had filed prior applications or had received compensation or reimbursement of expenses at an earlier time in the case, the amounts previously requested or awarded are not considered when determining whether the present application exceeds \$1,000 for the purpose of applying this rule.

Committee Note to 2001 Amendments

Subdivision (c)(3) is added to assure that parties given notice of a hearing to consider confirmation of a plan under subdivision (b) are given adequate notice of an injunction provided for in the plan if it would enjoin conduct that is not otherwise enjoined by operation of the Code. The validity and effect of any injunction provided for in a plan are substantive law matters that are beyond the scope of these rules.

The notice requirement of subdivision (c)(3) is not applicable to an injunction contained in a plan if it is substantially the same as an injunction provided under the Code. For example, if a plan contains an injunction against acts to collect a discharged debt from the debtor, Rule 2002 (c)(3) would not apply because that conduct would be enjoined under § 524(a)(2) upon the debtor's discharge. But if a plan provides that creditors will be enjoined from asserting claims against persons who are not debtors in the case, the notice of the confirmation hearing must include the information required under Rule 2002(c)(3) because that conduct would not be enjoined by operation of the Code. See § 524(e).

The requirement that the notice identify the entities that would be subject to the injunction requires only reasonable identification under the circumstances. If the entities that would be subject to the injunction cannot be identified by name, the notice may describe them by class or category if reasonable under the circumstances. For example, it may be sufficient for the notice to identify the entities as “all creditors of the debtor” and for the notice to be published in a manner that satisfies due process requirements.

Subdivision (g) has been revised to clarify that where a creditor or indenture trustee files both a proof of claim which includes a mailing address and a separate request designating a mailing address, the last paper filed determines the proper address. The amendments also clarify that a request designating a mailing address is effective only with respect to a particular case.

Under Rule 2002(g), a duly filed proof of claim is considered a request designating a mailing address if a notice of no dividend has been given under Rule 2002(e), but has been superseded by a subsequent notice of possible dividend under Rule 3002(c)(5). A duly filed proof of interest is considered a request designating a mailing address of an equity security holder.

Rule 2002(g)(3) is added to assure that notices to an infant or incompetent person under this rule are mailed to the appropriate guardian or other legal representative. Under Rule 1007(m), if the debtor knows that a creditor is an infant or incompetent person, the debtor is required to include in the list and schedule of creditors the name and address of the person upon whom process would be served in an adversary proceeding in accordance with Rule 7004(b)(2). If the infant or incompetent person, or another person, files a request or proof of claim designating a different name and mailing address, the notices would have to be mailed to both names and addresses until the court resolved the issue as to the proper mailing address.

The other amendments to Rule 2002(g) are stylistic.

CHANGES MADE AFTER PUBLICATION AND COMMENTS

In Rule 2002(c)(3), the word “highlighted” was replaced with “underlined” because highlighted documents are difficult to scan electronically for inclusion in the clerks’ files. The Committee Note was revised to put in a more prominent position the statement that the validity and effect of any injunction provided for in a plan are substantive matters beyond the scope of the rules.

In Rule 2002(g), no changes were made.

Rule 2003

MEETING OF CREDITORS OR EQUITY SECURITY HOLDERS

(a) Date and Place. In a chapter 7 liquidation or a chapter 11 reorganization case, the United States trustee shall call a meeting of creditors to be held no fewer than 20 and no more than 40 days after the order for relief. In a chapter 12 family farmer debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 20 and no more than 35 days after the order for relief. In a chapter 13 individual’s debt adjustment case, the United States

trustee shall call a meeting of creditors to be held no fewer than 20 and no more than 50 days after the order for relief. If there is an appeal from or a motion to vacate the order for relief, or if there is a motion to dismiss the case, the United States trustee may set a later date for the meeting. The meeting may be held at a regular place for holding court or at any other place designated by the United States trustee within the district convenient for the parties in interest. If the United States trustee designates a place for the meeting which is not regularly staffed by the United States trustee or an assistant who may preside at the meeting, the meeting may be held not more than 60 days after the order for relief.

(b) Order of Meeting.

(1) *Meeting of Creditors.* The United States trustee shall preside at the meeting of creditors. The business of the meeting shall include the examination of the debtor under oath and, in a chapter 7 liquidation case, may include the election of a trustee or of a creditors' committee. The presiding officer shall have the authority to administer oaths.

(2) *Meeting of Equity Security Holders.* If the United States trustee convenes a meeting of equity security holders pursuant to § 341(b) of the Code, the United States trustee shall fix a date for the meeting and shall preside.

(3) *Right to Vote.* In a chapter 7 liquidation case, a creditor is entitled to vote at a meeting if, at or before the meeting, the creditor has filed a proof of claim or a writing setting forth facts evidencing a right to vote pursuant to § 702(a) of the Code unless objection is made to the claim or the proof of claim is insufficient on its face. A creditor of a partnership may file a proof of claim or writing evidencing a right to vote for the trustee for the estate of a general partner notwithstanding that a trustee for the estate of the partnership has previously qualified. In the event of an objection to the amount or allowability of a claim for the purpose of voting, unless the court orders otherwise, the United States trustee shall tabulate the votes for each alternative presented by the dispute and, if resolution of such dispute is necessary to determine the result of the election, the tabulations for each alternative shall be reported to the court.

(c) Record of Meeting. Any examination under oath at the meeting of creditors held pursuant to § 341(a) of the Code shall be recorded verbatim by the United States trustee using electronic sound recording equipment or other means of recording, and such record shall be preserved by the United States trustee and available for public access until two years after the conclusion of the meeting of creditors. Upon request of any entity, the United States trustee shall certify and provide a copy or transcript of such recording at the entity's expense.

(d) Report of Election and Resolution of Disputes in a Chapter 7 Case.

(1) *Report of Undisputed Election.* In a chapter 7 case, if the election of a trustee or a member of a creditors' committee is not disputed, the United States trustee shall promptly file a report of the election, including the name and address of the person or entity elected and a statement that the election is undisputed.

(2) *Disputed Election.* If the election is disputed, the United States trustee shall promptly file a report stating that the election is disputed, informing the court of the nature of the dispute, and listing the name and address of any candidate elected under any alternative presented by the dispute. No later than the date on which the report is filed, the United States trustee shall mail a copy of

the report to any party in interest that has made a request to receive a copy of the report. Pending disposition by the court of a disputed election for trustee, the interim trustee shall continue in office. Unless a motion for the resolution of the dispute is filed no later than 10 days after the United States trustee files a report of a disputed election for trustee, the interim trustee shall serve as trustee in the case.

(e) Adjournment. The meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time without further written notice.

(f) Special Meetings. The United States trustee may call a special meeting of creditors on request of a party in interest or on the United States trustee's own initiative.

(g) Final Meeting. If the United States trustee calls a final meeting of creditors in a case in which the net proceeds realized exceed \$1,500, the clerk shall mail a summary of the trustee's final account to the creditors with a notice of the meeting, together with a statement of the amount of the claims allowed. The trustee shall attend the final meeting and shall, if requested, report on the administration of the estate.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993; Apr. 29, 1999, eff. Dec. 1, 1999.

Cross References

Affirmations, see rule 9012.

Election of creditors' committee in liquidation case, see § 705 of this title.

Eligibility to serve as and qualification of trustee, see §§ 321, 322 of this title.

Enlargement of time not permitted—

 Date of meeting of creditors, see rule 9006.

 Motion for resolution of trustee election dispute, see rule 9006.

Holders of multiple proxies to file list of proxies to be voted, see rule 2006.

Inapplicability of this rule to—

 Municipality debt adjustment case, see § 901 of this title.

 Railroad reorganization case, see § 1161 of this title.

Interim trustee in liquidation case, see rule 2001 and § 701 of this title.

Motions: form and service, see rule 9013.

Notice of equity security holders' meeting in reorganization case, see rule 2002.

Reduction of twenty-day period for date of meeting of creditors not permitted, see rule 9006.

Selection and substitution of trustees, see rules 2008, 2012.

Time for objections to property claimed to be exempt, see rule 4003.

Twenty-day notice of creditors' meeting, see rule 2002.

Library References:

C.J.S. Bankruptcy §§ 193, 373.

West's Key No. Digests, Bankruptcy ⇨3024.

Committee Note

Section 341(a) of the Code requires a meeting of creditors in a chapter 7, 11 or 13 case, and § 341(b) permits the court to order a meeting of equity security holders. A major change from prior law, however, prohibits the judge from attending or presiding over the meeting. Section 341(c).

This rule does not apply either in a case for the reorganization of a railroad or for the adjustment of debts of a municipality. Sections 1161 and 901 render §§ 341 and 343 inapplicable in these types of cases. Section 341 sets the requirement for a meeting of creditors and § 343 provides for the examination of the debtor.

Subdivision (a). The meeting is to be held between 20 and 40 days after the date of the order for relief. In a voluntary case, the date of the order for relief is the date of the filing of the petition (§ 301 of the Code); in an involuntary case, it is the date of an actual order (§ 303(i) of the Code).

Subdivision (b) provides flexibility as to who will preside at the meeting of creditors. The court may designate a person to serve as presiding officer, such as the interim trustee appointed under § 701 of the Code. If the court does not designate anyone, the clerk will preside. In either case, creditors may elect a person of their own choosing. In any event, the clerk may remain to record the proceedings and take appearances. Use of the clerk is not contrary to the legislative policy of § 341(c). The judge remains insulated from any information coming forth at the meeting and any information obtained by the clerk must not be relayed to the judge.

Although the clerk may preside at the meeting, the clerk is not performing any kind of judicial role, nor should the clerk give any semblance of performing such a role. It would be pretentious for the clerk to ascend the bench, don a robe or be addressed as "your honor". The clerk should not appear to parties or others as any type of judicial officer.

In a chapter 11 case, if a committee of unsecured creditors has been appointed pursuant to § 1102(a)(1) of the Code and a chairman has been selected, the chairman will preside or a person, such as the attorney for the committee, may be designated to preside by the chairman.

Since the judge must fix the bond of the trustee but cannot be present at the meeting, the rule allows the creditors to recommend the amount of the bond. They should be able to obtain relevant information concerning the extent of assets of the debtor at the meeting.

Paragraph (1) authorizes the presiding officer to administer oaths. This is important because the debtor's examination must be under oath.

Paragraph (3) of subdivision (b) has application only in a chapter 7 case. That is the only type of case under the Code that permits election of a trustee or committee. In all other cases, no vote is taken at the meeting of creditors. If it is necessary for the court to make a determination with respect to a claim, the meeting may be adjourned until the objection or dispute is resolved.

The second sentence recognizes that partnership creditors may vote for a trustee of a partner's estate along with the separate creditors of the partner. Although § 723(c) gives the trustee of a partnership a claim against a partner's estate for the full amount of partnership creditors' claims allowed, the purpose and function of this provision are to simplify distribution and prevent double proof, not to disfranchise partnership creditors in electing a trustee of an estate against which they hold allowable claims.

Subdivision (c) requires minutes and a record of the meeting to be maintained by the presiding officer. A verbatim record must be made of the debtor's examination but the rule is flexible as to the means used to record the examination.

Subdivision (d) recognizes that the court must be informed immediately about the election or nonelection of a trustee in a chapter 7 case. Pursuant to Rule 2008, the clerk officially informs the trustee of his election or appointment and how he is to qualify. The presiding person has no authority to resolve a disputed election.

For purposes of expediency, the results of the election should be obtained for each alternative presented by the dispute and immediately reported to the court. Thus, when an interested party presents the dispute to the court, its prompt resolution by the court will determine the dispute and a new or adjourned meeting to conduct the election may be avoided. The clerk is not an interested party.

A creditors' committee may be elected only in a chapter 7 case. In chapter 11 cases, a creditors' committee is appointed pursuant to § 1102.

While a final meeting is not required, Rule 2002(f)(10) provides for the trustee's final account to be sent to creditors.

Committee Note to 1987 Amendments

Subdivision (a). Many courts schedule meetings of creditors at various locations in the district. Because the clerk must schedule meetings at those locations, an additional 20 days for scheduling the meetings is provided under the amended rule.

Committee Note to 1991 Amendments

The amendment to subdivision (a) relating to the calling of the meeting of creditors in a chapter 12 case is consistent with the expedited procedures of chapter 12. Subdivision (a) is also amended to clarify that the United States trustee does not call a meeting of creditors in a chapter 9 case. Pursuant to § 901(a) of the Code, § 341 is inapplicable in chapter 9 cases. The other amendments to subdivisions (a), (b)(1), and (b)(2) and the additions of subdivisions (f) and (g) are derived from Rule X-1006 and conform to the 1986 amendments to § 341 of the Code. The second sentence of subdivision (b)(3) is amended because Rule 2009(e) is abrogated. Although the United States trustee fixes the date for the meeting, the clerk of the bankruptcy court transmits the notice of the meeting unless the court orders otherwise, as prescribed in Rule 2002(a)(1).

Pursuant to § 702 and § 705 of the Code, creditors may elect a trustee and a committee in a chapter 7 case. Subdivision (b) of this rule provides that the United States trustee shall preside over any election that is held under those sections. The deletion of the last sentence of subdivision (b)(1) does not preclude creditors from recommending to the United States trustee the amount of the trustee's bond when a trustee is elected. Trustees and committees are not elected in chapter 11, 12, and 13 cases.

If an election is disputed, the United States trustee shall not resolve the dispute. For purposes of expediency, the United States trustee shall tabulate the results of the election for each alternative presented by the dispute. However, if the court finds that such tabulation is not feasible under the circumstances, the United States trustee need not tabulate the votes. If such tabulation is feasible and if the disputed vote or votes would affect the result of the election, the tabulations of votes for each alternative presented by the dispute shall be reported to the court. If a motion is made for resolution of the dispute in accordance with subdivision (d) of this rule, the court will

determine the issue and another meeting to conduct the election may not be necessary.

Subdivisions (f) and (g) are derived from Rule X-1006(d) and (e), except that the amount is increased to \$1,500 to conform to the amendment to Rule 2002(f).

Committee Note to 1993 Amendments

Subdivision (a) is amended to extend by ten days the time for holding the meeting of creditors in a chapter 13 case. This extension will provide more flexibility for scheduling the meeting of creditors. Other amendments are stylistic and make no substantive change.

Committee Note to 1999 Amendments

Subdivision (d) is amended to require the United States trustee to mail a copy of a report of a disputed election to any party in interest that has requested a copy of it. Also, if the election is for a trustee, the rule as amended will give a party in interest ten days from the filing of the report, rather than from the date of the meeting of creditors, to file a motion to resolve the dispute.

The substitution of "United States trustee" for "presiding officer" is stylistic. Section 341(a) of the Code provides that the United States trustee shall preside at the meeting of creditors. Other amendments are designed to conform to the style of Rule 2007.1(b)(3) regarding the election of a trustee in a chapter 11 case.

Rule 2004

EXAMINATION

(a) Examination on Motion. On motion of any party in interest, the court may order the examination of any entity.

(b) Scope of Examination. The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

(c) Compelling Attendance and Production of Documentary Evidence. The attendance of an entity for examination and the production of documentary evidence may be compelled in the manner provided in Rule 9016 for the attendance of witnesses at a hearing or trial.

(d) Time and Place of Examination of Debtor. The court may for cause shown and on terms as it may impose order the debtor to be examined under this

rule at any time or place it designates, whether within or without the district wherein the case is pending.

(e) Mileage. An entity other than a debtor shall not be required to attend as a witness unless lawful mileage and witness fee for one day's attendance shall be first tendered. If the debtor resides more than 100 miles from the place of examination when required to appear for an examination under this rule, the mileage allowed by law to a witness shall be tendered for any distance more than 100 miles from the debtor's residence at the date of the filing of the first petition commencing a case under the Code or the residence at the time the debtor is required to appear for the examination, whichever is the lesser.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Allowances and travel expenses of witnesses, see § 1821 of Title 28, Judiciary and Judicial Procedure.

Apprehension and removal of debtor to compel attendance for examination, see rule 2005.

Debtor as corporation or partnership for purposes of this rule, see rule 9001.

Duty of bankrupt to—

Attend hearing on right to discharge, see § 524 of this title.

Submit to examination, see rule 4002.

Duty of trustee to investigate debtor—

Individual debt adjustment case, see § 1302 of this title.

Liquidation case, see § 704 of this title.

Examination of debtor concerning compensation agreements with attorney, see rule 2017.

Immunity from self-incrimination, see § 344 of this title.

Motions; form and service, see rule 9013.

Library References:

C.J.S. Bankruptcy § 204; Criminal Law §§ 78–86; Witnesses §§ 16, 430 et seq.

West's Key No. Digests, Bankruptcy Ⓒ3040.1–3048; Criminal Law Ⓒ42; Witnesses Ⓒ5, 292–310.

Committee Note

Subdivision (a) of this rule is derived from former Bankruptcy Rule 205(a). See generally 2 Collier, *Bankruptcy* ¶¶ 343.02, 343.08, 343.13 (15th ed. 1981). It specifies the manner of moving for an examination. The motion may be heard *ex parte* or it may be heard on notice.

Subdivision (b) is derived from former Bankruptcy Rules 205(d) and 11–26.

Subdivision (c) specifies the mode of compelling attendance of a witness or party for an examination and for the production of evidence under this rule. The subdivision is substantially declaratory of the practice that had developed under § 21a of the Act. See 2 Collier, *supra* ¶ 343.11.

This subdivision will be applicable for the most part to the examination of a person other than the debtor. The debtor is required to appear at the meeting of creditors for examination. The word “person” includes the debtor and this subdivision may be used if necessary to obtain the debtor's attendance for examination.

Subdivision (d) is derived from former Bankruptcy Rule 205(f) and is not a limitation on subdivision (c). Any person, including the debtor, served with a subpoena within the range of a subpoena must attend for examination

pursuant to subdivision (c). Subdivision (d) applies only to the debtor and a subpoena need not be issued. There are no territorial limits on the service of an order on the debtor. See, e.g., *In re Totem Lodge & Country Club, Inc.*, 134 F.Supp. 158 (S.D.N.Y.1955).

Subdivision (e) is derived from former Bankruptcy Rule 205(g). The lawful mileage and fee for attendance at a United States court as a witness are prescribed by 28 U.S.C. § 1821.

Definition of Debtor. The word "debtor" as used in this rule includes the persons specified in the definition in Rule 9001(5).

Spousal Privilege. The limitation on the spousal privilege formerly contained in § 21a of the Act is not carried over in the Code. For privileges generally, see Rule 501 of the Federal Rules of Evidence made applicable in cases under the Code by Rule 1101 thereof.

Committee Note to 1991 Amendments

This rule is amended to allow the examination in a chapter 12 case to cover the same matters that may be covered in an examination in a chapter 11 or 13 case.

Rule 2005

APPREHENSION AND REMOVAL OF DEBTOR TO COMPEL ATTENDANCE FOR EXAMINATION

(a) Order to Compel Attendance for Examination. On motion of any party in interest supported by an affidavit alleging (1) that the examination of the debtor is necessary for the proper administration of the estate and that there is reasonable cause to believe that the debtor is about to leave or has left the debtor's residence or principal place of business to avoid examination, or (2) that the debtor has evaded service of a subpoena or of an order to attend for examination, or (3) that the debtor has willfully disobeyed a subpoena or order to attend for examination, duly served, the court may issue to the marshal, or some other officer authorized by law, an order directing the officer to bring the debtor before the court without unnecessary delay. If, after hearing, the court finds the allegations to be true, the court shall thereupon cause the debtor to be examined forthwith. If necessary, the court shall fix conditions for further examination and for the debtor's obedience to all orders made in reference thereto.

(b) Removal. Whenever any order to bring the debtor before the court is issued under this rule and the debtor is found in a district other than that of the court issuing the order, the debtor may be taken into custody under the order and removed in accordance with the following rules:

(1) If the debtor taken into custody under the order at a place less than 100 miles from the place of issue of the order, the debtor shall be brought forthwith before the court that issued the order.

(2) If the debtor taken into custody under the order at a place 100 miles or more from the place of issue of the order, the debtor shall be brought without unnecessary delay before the nearest available United States magistrate judge, bankruptcy judge, or district judge. If, after hearing, the magistrate judge, bankruptcy judge, or district judge finds that an order has issued under this rule

and that the person in custody is the debtor, or if the person in custody waives a hearing, the magistrate judge, bankruptcy judge, or district judge shall order removal, and the person in custody shall be released on conditions ensuring prompt appearance before the court that issued the order to compel the attendance.

(c) Conditions of Release. In determining what conditions will reasonably assure attendance or obedience under subdivision (a) of this rule or appearance under subdivision (b) of this rule, the court shall be governed by the provisions and policies of title 18, U.S.C., § 3146(a) and (b).

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Aug. 1, 1993.

Cross References

Debtor as corporation or partnership for purposes of this rule, see rule 9001.

Motions; form and service, see rule 9013.

Library References:

C.J.S. Bankruptcy § 204.

West's Key No. Digests, Bankruptcy ⇨3043.

Committee Note

This rule is derived from former Bankruptcy Rule 206. The rule requires the debtor to be examined as soon as possible if allegations of the movant for compulsory examination under this rule are found to be true after a hearing. Subdivision (b) includes in paragraphs (1) and (2) provisions adapted from subdivisions (a) and (b) of Rule 40 of the Federal Rules of Criminal Procedure, which governs the handling of a person arrested in one district on a warrant issued in another. Subdivision (c) incorporates by reference the features of subdivisions (a) and (b) of 18 U.S.C. § 3146, which prescribe standards, procedures and factors to be considered in determining conditions of release of accused persons in noncapital cases prior to trial. The word "debtor" as used in this rule includes the persons named in Rule 9001(5).

The affidavit required to be submitted in support of the motion may be subscribed by the unsworn declaration provided for in 28 U.S.C. § 1746.

Committee Note to 1993 Amendments

Subdivision (b)(2) is amended to conform to § 321 of the Judicial Improvements Act of 1990, Pub.L. No. 101-650, which changed the title of "United States magistrate" to "United States magistrate judge." Other amendments are stylistic and make no substantive change.

Rule 2006

SOLICITATION AND VOTING OF PROXIES IN CHAPTER 7 LIQUIDATION CASES

(a) Applicability. This rule applies only in a liquidation case pending under chapter 7 of the Code.

(b) Definitions.

(1) *Proxy.* A proxy is a written power of attorney authorizing any entity to vote the claim or otherwise act as the owner's attorney in fact in connection with the administration of the estate.

(2) *Solicitation of Proxy.* The solicitation of a proxy is any communication, other than one from an attorney to a regular client who owns a claim or from an attorney to the owner of a claim who has requested the attorney to represent the owner, by which a creditor is asked, directly or indirectly, to give a proxy after or in contemplation of the filing of a petition by or against the debtor.

(c) Authorized Solicitation.

(1) A proxy may be solicited only by (A) a creditor owning an allowable unsecured claim against the estate on the date of the filing of the petition; (B) a committee elected pursuant to § 705 of the Code; (C) a committee of creditors selected by a majority in number and amount of claims of creditors (i) whose claims are not contingent or unliquidated, (ii) who are not disqualified from voting under § 702(a) of the Code and (iii) who were present or represented at a meeting of which all creditors having claims of over \$500 or the 100 creditors having the largest claims had at least five days notice in writing and of which meeting written minutes were kept and are available reporting the names of the creditors present or represented and voting and the amounts of their claims; or (D) a bona fide trade or credit association, but such association may solicit only creditors who were its members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition.

(2) A proxy may be solicited only in writing.

(d) Solicitation Not Authorized. This rule does not permit solicitation (1) in any interest other than that of general creditors; (2) by or on behalf of any custodian; (3) by the interim trustee or by or on behalf of any entity not qualified to vote under § 702(a) of the Code; (4) by or on behalf of an attorney at law; or (5) by or on behalf of a transferee of a claim for collection only.

(e) Data Required From Holders of Multiple Proxies. At any time before the voting commences at any meeting of creditors pursuant to § 341(a) of the Code, or at any other time as the court may direct, a holder of two or more proxies shall file and transmit to the United States trustee a verified list of the proxies to be voted and a verified statement of the pertinent facts and circumstances in connection with the execution and delivery of each proxy, including:

(1) a copy of the solicitation;

(2) identification of the solicitor, the forwarder, if the forwarder is neither the solicitor nor the owner of the claim, and the proxyholder, including their connections with the debtor and with each other. If the solicitor, forwarder, or proxyholder is an association, there shall also be included a statement that the creditors whose claims have been solicited and the creditors whose claims are to be voted were members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition. If the solicitor, forwarder, or proxyholder is a committee of creditors, the statement shall also set forth the date and place the committee was organized, that the committee was organized in accordance with clause (B) or (C) of paragraph (c)(1) of this rule, the members of the committee, the amounts of their claims, when the claims were acquired, the amounts paid therefor, and the extent to which the claims of the committee members are secured or entitled to priority;

(3) a statement that no consideration has been paid or promised by the proxyholder for the proxy;

(4) a statement as to whether there is any agreement and, if so, the particulars thereof, between the proxyholder and any other entity for the payment of any consideration in connection with voting the proxy, or for the sharing of compensation with any entity, other than a member or regular associate of the proxyholder's law firm, which may be allowed the trustee or any entity for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate;

(5) if the proxy was solicited by an entity other than the proxyholder, or forwarded to the holder by an entity who is neither a solicitor of the proxy nor the owner of the claim, a statement signed and verified by the solicitor or forwarder that no consideration has been paid or promised for the proxy, and whether there is any agreement, and, if so, the particulars thereof, between the solicitor or forwarder and any other entity for the payment of any consideration in connection with voting the proxy, or for sharing compensation with any entity, other than a member or regular associate of the solicitor's or forwarder's law firm which may be allowed the trustee or any entity for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate;

(6) if the solicitor, forwarder, or proxyholder is a committee, a statement signed and verified by each member as to the amount and source of any consideration paid or to be paid to such member in connection with the case other than by way of dividend on the member's claim.

(f) Enforcement of Restrictions on Solicitation. On motion of any party in interest or on its own initiative, the court may determine whether there has been a failure to comply with the provisions of this rule or any other impropriety in connection with the solicitation or voting of a proxy. After notice and a hearing the court may reject any proxy for cause, vacate any order entered in consequence of the voting of any proxy which should have been rejected, or take any other appropriate action.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Committee of unsecured creditors selected before order for relief, solicitation pursuant to this rule, see rule 2007.

Motions; form and service, see rule 9013.

Signing and verification of papers, see rule 9011.

Library References:

C.J.S. Bankruptcy §§ 193, 373.

West's Key No. Digests, Bankruptcy ☞3024.

Committee Note

This rule is a comprehensive regulation of solicitation and voting of proxies in liquidation cases. It is derived from former Bankruptcy Rule 208. The rule applies only in chapter 7 cases because no voting occurs, other than on a plan, in a chapter 11 case. Former Bankruptcy Rule 208 did not apply to solicitations of acceptances of plans.

Creditor control was a basic feature of the Act and is continued, in part, by the Code. Creditor democracy is perverted and the congressional objective frustrated, however, if control of administration falls into the hands of

persons whose principal interest is not in what the estate can be made to yield to the unsecured creditors but in what it can yield to those involved in its administration or in other ulterior objectives.

Subdivision (b). The definition of proxy in the first paragraph of subdivision (b) is derived from former Bankruptcy Rule 208.

Subdivision (c). The purpose of the rule is to protect creditors against loss of control of administration of their debtors' estates to holders of proxies having interests that differ from those of the creditors. The rule does not prohibit solicitation but restricts it to those who were creditors at the commencement of the case or their freely and fairly selected representatives. The special role occupied by credit and trade associations is recognized in the last clause of subdivision (c)(1). On the assumption that members or subscribers may have affiliated with an association in part for the purpose of obtaining its services as a representative in liquidation proceedings, an established association is authorized to solicit its own members, or its regular customers or clients, who were creditors on the date of the filing of the petition. Although the association may not solicit nonmembers or nonsubscribers for proxies, it may sponsor a meeting of creditors at which a committee entitled to solicit proxies may be selected in accordance with clause (C) of subdivision (c)(1).

Under certain circumstances, the relationship of a creditor, creditors' committee, or association to the estate or the case may be such as to warrant rejection of any proxy solicited by such a person or group. Thus a person who is forbidden by the Code to vote his own claim should be equally disabled to solicit proxies from creditors. Solicitation by or on behalf of the debtor has been uniformly condemned, *e.g.*, *In re White*, 15 F.2d 371 (9th Cir. 1926), as has solicitation on behalf of a preferred creditor, *Matter of Law*, 13 Am.B.R. 650 (S.D.Ill.1905). The prohibition on solicitation by a receiver or his attorney made explicit by General Order 39 has been collaterally supported by rulings rejecting proxies solicited by a receiver in equity. *In re Western States Bldg.-Loan Ass'n*, 54 F.2d 415 (S.D.Cal.1931), and by an assignee for the benefit of creditors, *Lines v. Falstaff Brewing Co.*, 233 F.2d 927 (9th Cir. 1956).

Subdivision (d) prohibits solicitation by any person or group having a relationship described in the preceding paragraph. It also makes no exception for attorneys or transferees of claims for collection. The rule does not undertake to regulate communications between an attorney and his regular client or between an attorney and a creditor who has asked the attorney to represent him in a proceeding under the Code, but any other communication by an attorney or any other person or group requesting a proxy from the owner of a claim constitutes a regulated solicitation. Solicitation by an attorney of a proxy from a creditor who was not a client prior to the solicitation is objectionable not only as unethical conduct as recognized by such cases as *In the Matter of Darland Company*, 184 F.Supp. 760 (S.D.Iowa 1960) but also and more importantly because the practice carries a substantial risk that administration will fall into the hands of those whose interest is in obtaining fees from the estate rather than securing dividends for creditors. The same risk attaches to solicitation by the holder of a claim for collection only.

Subdivision (e). The regulation of solicitation and voting of proxies is achieved by the rule principally through the imposition of requirements of

disclosure on the holders of two or more proxies. The disclosures must be made to the clerk before the meeting at which the proxies are to be voted to afford the clerk or a party in interest an opportunity to examine the circumstances accompanying the acquisition of the proxies in advance of any exercise of the proxies. In the light of the examination the clerk or a party in interest should bring to the attention of the judge any question that arises and the judge may permit the proxies that comply with the rule to be voted and reject those that do not unless the holders can effect or establish compliance in such manner as the court shall prescribe. The holders of single proxies are excused from the disclosure requirements because of the insubstantiality of the risk that such proxies have been solicited, or will be voted, in an interest other than that of general creditors.

Every holder of two or more proxies must include in the submission a verified statement that no consideration has been paid or promised for the proxy, either by the proxyholder or the solicitor or any forwarder of the proxy. Any payment or promise of consideration for a proxy would be conclusive evidence of a purpose to acquire control of the administration of an estate for an ulterior purpose. The holder of multiple proxies must also include in the submission a verified statement as to whether there is any agreement by the holder, the solicitor, or any forwarder of the proxy for the employment of any person in the administration of an estate or for the sharing of any compensation allowed in connection with the administration of the estate. The provisions requiring these statements implement the policy of the Code expressed in § 504 as well as the policy of this rule to deter the acquisition of proxies for the purpose of obtaining a share in the outlays for administration. Finally the facts as to any consideration moving or promised to any member of a committee which functions as a solicitor, forwarder, or proxyholder must be disclosed by the proxyholder. Such information would be of significance to the court in evaluating the purpose of the committee in obtaining, transmitting, or voting proxies.

Subdivision (f) has counterparts in the local rules referred to in the Advisory Committee's Note to former Bankruptcy Rule 208. Courts have been accorded a wide range of discretion in the handling of disputes involving proxies. Thus the referee was allowed to reject proxies and to proceed forthwith to hold a scheduled election at the same meeting. *E.g.*, *In re Portage Wholesale Co.*, 183 F.2d 959 (7th Cir. 1950); *In re McGill*, 106 Fed. 57 (6th Cir. 1901); *In re Deena Woolen Mills, Inc.*, 114 F.Supp. 260, 273 (D.Me.1953); *In re Finlay*, 3 Am.B.R. 738 (S.D.N.Y.1900). The bankruptcy judge may postpone an election to permit a determination of issues presented by a dispute as to proxies and to afford those creditors whose proxies are rejected an opportunity to give new proxies or to attend an adjourned meeting to vote their own claims. *Cf. In the Matter of Lenrick Sales, Inc.*, 369 F.2d 439, 442-43 (3d Cir.), cert. denied, 389 U.S. 822 (1967); *In the Matter of Construction Supply Corp.* 221 F.Supp. 124, 128 (E.D.Va.1963). This rule is not intended to restrict the scope of the court's discretion in the handling of disputes as to proxies.

Committee Note to 1991 Amendments

This rule is amended to give the United States trustee information in connection with proxies so that the United States trustee may perform responsibilities as presiding officer at the § 341 meeting of creditors. See Rule 2003.

The words "with the clerk" are deleted as unnecessary. See Rules 5005(a) and 9001(3).

Rule 2007

REVIEW OF APPOINTMENT OF CREDITORS' COMMITTEE ORGANIZED BEFORE COMMENCEMENT OF THE CASE

(a) Motion to Review Appointment. If a committee appointed by the United States trustee pursuant to § 1102(a) of the Code consists of the members of a committee organized by creditors before the commencement of a chapter 9 or chapter 11 case, on motion of a party in interest and after a hearing on notice to the United States trustee and other entities as the court may direct, the court may determine whether the appointment of the committee satisfies the requirements of § 1102(b)(1) of the Code.

(b) Selection of Members of Committee. The court may find that a committee organized by unsecured creditors before the commencement of a chapter 9 or chapter 11 case was fairly chosen if:

(1) it was selected by a majority in number and amount of claims of unsecured creditors who may vote under § 702(a) of the Code and were present in person or represented at a meeting of which all creditors having unsecured claims of over \$1,000 or the 100 unsecured creditors having the largest claims had at least five days notice in writing, and of which meeting written minutes reporting the names of the creditors present or represented and voting and the amounts of their claims were kept and are available for inspection;

(2) all proxies voted at the meeting for the elected committee were solicited pursuant to Rule 2006 and the lists and statements required by subdivision (e) thereof have been transmitted to the United States trustee; and

(3) the organization of the committee was in all other respects fair and proper.

(c) Failure to Comply With Requirements for Appointment. After a hearing on notice pursuant to subdivision (a) of this rule, the court shall direct the United States trustee to vacate the appointment of the committee and may order other appropriate action if the court finds that such appointment failed to satisfy the requirements of § 1102(b)(1) of the Code.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Representation of creditors and equity security holders in municipality debt adjustment and reorganization cases, see rule 2019.

Library References:

C.J.S. Bankruptcy §§ 193, 373.

West's Key No. Digests, Bankruptcy ☞3024.

Committee Note

Section 1102(b)(1) of the Code permits the court to appoint as the unsecured creditors' committee, the committee that was selected by creditors before the order for relief. This provision recognizes the propriety of continuing a "prepetition" committee in an official capacity. Such a committee,

however, must be found to have been fairly chosen and representative of the different kinds of claims to be represented.

Subdivision (a) does not necessarily require a hearing but does require a party in interest to bring to the court's attention the fact that a prepetition committee had been organized and should be appointed. An application would suffice for this purpose. Party in interest would include the committee, any member of the committee, or any of its agents acting for the committee. Whether or not notice of the application should be given to any other party is left to the discretion of the court.

Subdivision (b) implements § 1102(b)(1). The Code provision allows the court to appoint, as the official § 1102(a) committee, a "prepetition" committee if its members were fairly chosen and the committee is representative of the different kinds of claims. This subdivision of the rule indicates some of the factors the court may consider in determining whether the requirements of § 1102(b)(1) have been satisfied. In effect, the subdivision provides various factors which are similar to those set forth in Rule 2006 with respect to the solicitation and voting of proxies in a chapter 7 liquidation case.

Committee Note to 1987 Amendments

The rule is amended to conform to the 1984 amendments to § 1102(b)(1) of the Code.

Committee Note to 1991 Amendments

This rule is amended to conform to the 1986 amendments to § 1102(a). The United States trustee appoints committees pursuant to § 1102 in chapter 11 cases. Section 1102 is applicable in chapter 9 cases pursuant to § 901(a).

Although § 1102(b)(1) of the Code permits the United States trustee to appoint a prepetition committee as the statutory committee if its members were fairly chosen and it is representative of the different kinds of claims to be represented, the amendment to this rule provides a procedure for judicial review of the appointment. The factors that may be considered by the court in determining whether the committee was fairly chosen are not new. A finding that a prepetition committee has not been fairly chosen does not prohibit the appointment of some or all of its members to the creditors' committee. Although this rule deals only with judicial review of the appointment of prepetition committees, it does not preclude judicial review under Rule 2020 regarding the appointment of other committees.

Rule 2007.1

APPOINTMENT OF TRUSTEE OR EXAMINER IN A CHAPTER 11 REORGANIZATION CASE

(a) Order to Appoint Trustee or Examiner. In a chapter 11 reorganization case, a motion for an order to appoint a trustee or an examiner under § 1104(a) or § 1104(c) of the Code shall be made in accordance with Rule 9014.

(b) Election of trustee.

(1) *Request for an Election.* A request to convene a meeting of creditors for the purpose of electing a trustee in a chapter 11 reorganization case shall be filed and transmitted to the United States trustee in accordance with Rule 5005 within

the time prescribed by § 1104(b) of the Code. Pending court approval of the person elected, any person appointed by the United States trustee under § 1104(d) and approved in accordance with subdivision (c) of this rule shall serve as trustee.

(2) *Manner of Election and Notice.* An election of a trustee under § 1104(b) of the Code shall be conducted in the manner provided in Rules 2003(b)(3) and 2006. Notice of the meeting of creditors convened under § 1104(b) shall be given as provided in Rule 2002. The United States trustee shall preside at the meeting. A proxy for the purpose of voting in the election may be solicited only by a committee of creditors appointed under § 1102 of the Code or by any other party entitled to solicit a proxy pursuant to Rule 2006.

(3) *Report of Election and Resolution of Disputes.*

(A) *Report of Undisputed Election.* If the election is not disputed, the United States trustee shall promptly file a report of the election, including the name and address of the person elected and a statement that the election is undisputed. The United States trustee shall file with the report an application for approval of the appointment in accordance with subdivision (c) of this rule. The report constitutes appointment of the elected person to serve as trustee, subject to court approval, as of the date of entry of the order approving the appointment.

(B) *Disputed Election.* If the election is disputed, the United States trustee shall promptly file a report stating that the election is disputed, informing the court of the nature of the dispute, and listing the name and address of any candidate elected under any alternative presented by the dispute. The report shall be accompanied by a verified statement by each candidate elected under each alternative presented by the dispute, setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, and any person employed in the office of the United States trustee. Not later than the date on which the report of the disputed election is filed, the United States trustee shall mail a copy of the report and each verified statement to any party in interest that has made a request to convene a meeting under § 1104(b) or to receive a copy of the report, and to any committee appointed under § 1102 of the Code. Unless a motion for the resolution of the dispute is filed not later than 10 days after the United States trustee files the report, any person appointed by the United States trustee under § 1104(d) and approved in accordance with subdivision (c) of this rule shall serve as trustee. If a motion for the resolution of the dispute is timely filed, and the court determines the result of the election and approves the person elected, the report will constitute appointment of the elected person as of the date of entry of the order approving the appointment.

(c) **Approval of Appointment.** An order approving the appointment of a trustee elected under § 1104(b) or appointed under § 1104(d), or the appointment of an examiner under § 1104(d) of the Code, shall be made on application of the United States trustee. The application shall state the name of the person appointed and, to the best of the applicant's knowledge, all the person's connections with the debtor, creditors, any other parties in interest, their respective attorneys and accountants, the United States trustee, and persons employed in the office of the United States trustee. Unless the person has been elected under § 1104(b), the

application shall state the names of the parties in interest with whom the United States trustee consulted regarding the appointment. The application shall be accompanied by a verified statement of the person appointed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, and any person employed in the office of the United States trustee.

[Adopted Apr. 30, 1991, eff. Aug. 1, 1991; amended Apr. 11, 1997, eff. Dec. 1, 1997.]

Library References:

C.J.S. Bankruptcy § 375.

West's Key No. Digests, Bankruptcy ☞3623.1-3626.

Committee Note to 1991 Amendments

This rule is added to implement the 1986 amendments to § 1104 of the Code regarding the appointment of a trustee or examiner in a chapter 11 case. A motion for an order to appoint a trustee or examiner is a contested matter. Although the court decides whether the appointment is warranted under the particular facts of the case, it is the United States trustee who makes the appointment pursuant to § 1104(c) of the Code. The appointment is subject to approval of the court, however, which may be obtained by application of the United States trustee. Section 1104(c) of the Code requires that the appointment be made after consultation with parties in interest and that the person appointed be disinterested.

The requirement that connections with the United States trustee or persons employed in the United States trustee's office be revealed is not intended to enlarge the definition of "disinterested person" in § 101(13) of the Code, to supersede executive regulations or other laws relating to appointments by United States trustees, or to otherwise restrict the United States trustee's discretion in making appointments. This information is required, however, in the interest of full disclosure and confidence in the appointment process and to give the court all information that may be relevant to the exercise of judicial discretion in approving the appointment of a trustee or examiner in a chapter 11 case.

Committee Note to 1997 Amendments

This rule is amended to implement the 1994 amendments to § 1104 of the Code regarding the election of a trustee in a chapter 11 case.

Eligibility for voting in an election for a chapter 11 trustee is determined in accordance with Rule 2003(b)(3). Creditors whose claims are deemed filed under § 1111(a) are treated for voting purposes as creditors who have filed proofs of claim.

Proxies for the purpose of voting in the election may be solicited only by a creditors' committee appointed under § 1102 or by any other party entitled to solicit proxies pursuant to Rule 2006. Therefore, a trustee or examiner who has served in the case, or a committee of equity security holders appointed under § 1102, may not solicit proxies.

The procedures for reporting disputes to the court derive from similar provisions in Rule 2003(d) applicable to chapter 7 cases. An election may be disputed by a party in interest or by the United States trustee. For example, if the United States trustee believes that the person elected is ineligible to serve

as trustee because the person is not “disinterested,” the United States trustee should file a report disputing the election.

The word “only” is deleted from subdivision (b), redesignated as subdivision (c), to avoid any negative inference with respect to the availability of procedures for obtaining review of the United States trustee’s acts or failure to act pursuant to Rule 2020.

Rule 2008

NOTICE TO TRUSTEE OF SELECTION

The United States trustee shall immediately notify the person selected as trustee how to qualify and, if applicable, the amount of the trustee’s bond. A trustee that has filed a blanket bond pursuant to Rule 2010 and has been selected as trustee in a chapter 7, chapter 12, or chapter 13 case that does not notify the court and the United States trustee in writing of rejection of the office within five days after receipt of notice of selection shall be deemed to have accepted the office. Any other person selected as trustee shall notify the court and the United States trustee in writing of acceptance of the office within five days after receipt of notice of selection or shall be deemed to have rejected the office.

Amended Mar. 1, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Appointment of trustees—

Individual debt adjustment case, see § 1302 of this title.

Railroad reorganization case, see § 1163 of this title.

Reorganization case, see § 1104 of this title.

Bonds of trustees, see § 322 of this title.

Election of trustee in liquidation case, see § 702 of this title.

Eligibility to serve as trustee, see § 321 of this title.

Limited purpose of trustee appointed in municipality debt adjustment case, see § 926 of this title.

Representation of creditors and equity security holders in municipality debt adjustment and reorganization cases, see rule 2019.

Right of creditors to elect single trustee when joint administration ordered, see rule 2009.

Library References:

C.J.S. Bankruptcy § 195.

West’s Key No. Digests, Bankruptcy ☞3006.

Committee Note

This rule is adapted from former Bankruptcy Rule 209(c). The remainder of that rule is inapplicable because its provisions are covered by §§ 701–703, 321 of the Code.

If the person selected as trustee accepts the office, he must qualify within five days after his selection, as required by § 322(a) of the Code.

In districts having a standing trustee for chapter 13 cases, a blanket acceptance of the appointment would be sufficient for compliance by the standing trustee with this rule.

Committee Note to 1987 Amendments

The rule is amended to eliminate the need for a standing chapter 13 trustee or member of the panel of chapter 7 trustees to accept or reject an appointment.

Committee Note to 1991 Amendments

The amendments to this rule relating to the United States trustee are derived from Rule X-1004(a) and conform to the 1986 amendments to the Code and 28 U.S.C. § 586 which provide that the United States trustee appoints and supervises trustees, and in a chapter 7 case presides over any election of a trustee. This rule applies when a trustee is either appointed or elected. This rule is also amended to provide for chapter 12 cases.

Rule 2009**TRUSTEES FOR ESTATES WHEN JOINT
ADMINISTRATION ORDERED**

(a) Election of Single Trustee for Estates Being Jointly Administered. If the court orders a joint administration of two or more estates pursuant to Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered.

(b) Right of Creditors to Elect Separate Trustee. Notwithstanding entry of an order for joint administration pursuant to Rule 1015(b) the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in § 702 of the Code.

(c) Appointment of Trustees for Estates Being Jointly Administered.

(1) *Chapter 7 Liquidation Cases.* The United States trustee may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.

(2) *Chapter 11 Reorganization Cases.* If the appointment of a trustee is ordered, the United States trustee may appoint one or more trustees for estates being jointly administered in chapter 11 cases.

(3) *Chapter 12 Family Farmer's Debt Adjustment Cases.* The United States trustee may appoint one or more trustees for estates being jointly administered in chapter 12 cases.

(4) *Chapter 13 Individual's Debt Adjustment Cases.* The United States trustee may appoint one or more trustees for estates being jointly administered in chapter 13 cases.

(d) Potential Conflicts of Interest. On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee who has been elected or appointed, the court shall order the selection of separate trustees for estates being jointly administered.

(e) Separate Accounts. The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Partnerships—

Commencement of involuntary cases, see § 303 of this title.

Person defined to include partnerships, see § 101 of this title.

Representation of creditors and equity security holders in municipality debt adjustment and reorganization cases, see rule 2019.

Right of creditor to vote for separate trustee of general partner's estate, see rule 2003.

Library References:

C.J.S. Bankruptcy §§ 195, 197, 198, 375.

West's Key No. Digests, Bankruptcy ☞3004.1, 3005, 3008.1, 3009, 3011, 3623.1-3626.

Committee Note

This rule is applicable in chapter 7 cases and, in part, in chapter 11 and 13 cases. The provisions in subdivisions (a) and (b) concerning creditor election of a trustee apply only in a chapter 7 case because it is only pursuant to § 702 of the Code that creditors may elect a trustee. Subdivision (c) of the rule applies in chapters 11 and 13 as well as chapter 7 cases; pursuant to § 1104 of the Code, the court may order the appointment of a trustee on application of a party in interest and, pursuant to § 1163 of the Code, the court must appoint a trustee in a railroad reorganization case. Subdivision (c) should not be taken as an indication that more than one trustee may be appointed for a single debtor. Section 1104(c) permits only one trustee for each estate. In a chapter 13 case, if there is no standing trustee, the court is to appoint a person to serve as trustee pursuant to § 1302 of the Code. There is no provision for a trustee in a chapter 9 case, except for a very limited purpose; see § 926 of the Code.

This rule recognizes that economical and expeditious administration of two or more estates may be facilitated not only by the selection of a single trustee for a partnership and its partners, but by such selection whenever estates are being jointly administered pursuant to Rule 1015. See *In the Matter of International Oil Co.*, 427 F.2d 186, 187 (2d Cir. 1970). The rule is derived from former § 5c of the Act and former Bankruptcy Rule 210. The premise of § 5c of the Act was that notwithstanding the potentially of conflict between the interests of the creditors of the partners and those of the creditors of the partnership, the conflict is not sufficiently serious or frequent in most cases to warrant the selection of separate trustees for the firm and the several partners. Even before the proviso was added to § 5c of the Act in 1938 to permit the creditors of a general partner to elect their separate trustee for his estate, it was held that the court had discretion to permit such an election or to make a separate appointment when a conflict of interest was recognized. *In re Wood*, 248 Fed. 246, 249-50 (6th Cir.), cert. denied, 247 U.S. 512 (1918); 4 Collier, *Bankruptcy* ¶ 723.04 (15th ed. 1980). The rule retains in subdivision (e) the features of the practice respecting the selection of a trustee that was developed under § 5 of the Act. Subdivisions (a) and (c) permit the court to authorize election of a single trustee or to make a single appointment when joint administration of estates of other kinds of debtors is ordered, but subdivision (d) requires the court to make a preliminary evaluation of the risks of conflict of interest. If after the election or appointment of a common trustee a conflict of interest materializes, the court must take appropriate action to deal with it.

Subdivision (f) is derived from § 5e of the Act and former Bankruptcy Rule 210(f) and requires that the common trustee keep a separate account for each estate in all cases that are jointly administered.

Committee Note to 1991 Amendments

One or more trustees may be appointed for estates being jointly administered in chapter 12 cases.

The amendments to this rule are derived from Rule X-1005 and are necessary because the United States trustee, rather than the court, has responsibility for appointing trustees pursuant to §§ 701, 1104, 1202, and 1302 of the Code.

If separate trustees are ordered for chapter 7 estates pursuant to subdivision (d), separate and successor trustees should be chosen as prescribed in § 703 of the Code. If the occasion for another election arises, the United States trustee should call a meeting of creditors for this purpose. An order to select separate trustees does not disqualify an appointed or elected trustee from serving for one of the estates.

Subdivision (e) is abrogated because the exercise of discretion by the United States trustee, who is in the Executive Branch, is not subject to advance restriction by rule of court. *United States v. Cox*, 342 F.2d 167 (5th Cir.1965), *cert. denied*, 365 U.S. 863 (1965); *United States v. Frumento*, 409 F.Supp. 136, 141 (E.D.Pa.), *aff'd*, 563 F.2d 1083 (3d Cir.1977), *cert. denied*, 434 U.S. 1072 (1977); see, *Smith v. United States*, 375 F.2d 243 (5th Cir.1967); House Report No. 95-595, 95th Cong., 1st Sess. 110 (1977). However, a trustee appointed by the United States trustee may be removed by the court for cause. See § 324 of the Code. Subdivision (d) of this rule, as amended, is consistent with § 324. Subdivision (f) is redesignated as subdivision (e).

Rule 2010

QUALIFICATION BY TRUSTEE; PROCEEDING ON BOND

(a) Blanket Bond. The United States trustee may authorize a blanket bond in favor of the United States conditioned on the faithful performance of official duties by the trustee or trustees to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case.

(b) Proceeding on Bond. A proceeding on the trustee's bond may be brought by any party in interest in the name of the United States for the use of the entity injured by the breach of the condition.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Proceeding on trustee's bond as exception to procedural rule of prosecution in name of real party in interest, see rule 7017.

Security; proceedings against sureties, see rule 9025.

Two-year limitations period on bond proceeding, see § 322 of this title.

Library References:

C.J.S. Bankruptcy § 195.

West's Key No. Digests, Bankruptcy ⇨3006.

Committee Note

Subdivisions (a) and (b). Subdivision (a) gives authority for approval by the court of a single bond to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case. The cases need not be related in any way. Substantial economies can be effected if a single bond covering a number of different cases can be issued and approved at one time. When a blanket bond is filed, the trustee qualifies under subdivision (b) of the rule by filing an acceptance of the office.

Subdivision (c) prescribes the evidentiary effect of a certified copy of an order approving the trustee's bond given by a trustee under this rule or, when a blanket bond has been authorized, of a certified copy of acceptance. This rule supplements the Federal Rules of Evidence, which apply in bankruptcy cases. See Rule 1101 of the Federal Rules of Evidence. The order of approval should conform to Official Form No. 25. See, however, § 549(c) of the Code which provides only for the filing of the petition in the real estate records to serve as constructive notice of the pendency of the case. See also Rule 2011 which prescribes the evidentiary effect of a certificate that the debtor is a debtor in possession.

Subdivision (d) is derived from former Bankruptcy Rule 212(f). Reference should be made to § 322(a) and (d) of the Code which requires the bond to be filed with the bankruptcy court and places a two year limitation for the commencement of a proceeding on the bond. A bond filed under this rule should conform to Official Form No. 25. A proceeding on the bond of a trustee is governed by the rules in Part VII. See the Note accompanying Rule 7001. See also Rule 9025.

Committee Note to 1987 Amendments

Subdivision (b) is deleted because of the amendment to Rule 2008.

Committee Note to 1991 Amendments

This rule is amended to conform to the 1986 amendment of § 322 of the Code. The United States trustee determines the amount and sufficiency of the trustee's bond. The amendment to subdivision (a) is derived from Rule X-1004(b).

Subdivision (b) is abrogated because an order approving a bond is no longer necessary in view of the 1986 amendments to § 322 of the Code. Subdivision (c) is redesignated as subdivision (b).

Rule 2011**EVIDENCE OF DEBTOR IN POSSESSION
OR QUALIFICATION OF TRUSTEE**

(a) Whenever evidence is required that a debtor is a debtor in possession or that a trustee has qualified, the clerk may so certify and the certificate shall constitute conclusive evidence of that fact.

(b) If a person elected or appointed as trustee does not qualify within the time prescribed by § 322(a) of the Code, the clerk shall so notify the court and the United States trustee.

Rule 2011

BANKRUPTCY RULES

Amended Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Debtor in possession for purposes of reorganization case defined as debtor except when trustee is serving, see § 1101 of this title.

Library References:

C.J.S. Bankruptcy §§ 194, 195, 371, 372, 376.
West's Key No. Digests, Bankruptcy ⇨3001, 3621.

Committee Note

This rule prescribes the evidentiary effect of a certificate issued by the clerk that the debtor is a debtor in possession. See Official Form No. 26. Only chapter 11 of the Code provides for a debtor in possession. See § 1107(a) of the Code. If, however, a trustee is appointed in the chapter 11 case, there will not be a debtor in possession. See §§ 1101(1), 1105 of the Code.

Committee Note to 1991 Amendments

This rule is amended to provide a procedure for proving that a trustee has qualified in accordance with § 322 of the Code. *Subdivision (b)* is added so that the court and the United States trustee will be informed if the person selected as trustee pursuant to §§ 701, 702, 1104, 1202, 1302, or 1163 fails to qualify within the time prescribed in § 322(a).

Rule 2012

SUBSTITUTION OF TRUSTEE OR SUCCESSOR TRUSTEE; ACCOUNTING

(a) Trustee. If a trustee is appointed in a chapter 11 case or the debtor is removed as debtor in possession in a chapter 12 case, the trustee is substituted automatically for the debtor in possession as a party in any pending action, proceeding, or matter.

(b) Successor trustee. When a trustee dies, resigns, is removed, or otherwise ceases to hold office during the pendency of a case under the Code (1) the successor is automatically substituted as a party in any pending action, proceeding, or matter; and (2) the successor trustee shall prepare, file, and transmit to the United States trustee an accounting of the prior administration of the estate.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Abatement of suit or proceeding upon death or removal of trustee, see § 325 of this title.
Election by creditors of successor trustee in liquidation case, see § 703 of this title.
Exception to procedural rule for substitution of parties, see rule 7025.
Power of court to remove trustee, see § 324 of this title.

Library References:

C.J.S. Bankruptcy §§ 194–196, 375.
West's Key No. Digests, Bankruptcy ⇨3001, 3007, 3623.1–3626.

Committee Note

Paragraph (1) of this rule implements § 325 of the Code. It provides that a pending action or proceeding continues without abatement and that the

trustee's successor is automatically substituted as a party whether it be another trustee or the debtor returned to possession, as such party.

Paragraph (2) places it within the responsibility of a successor trustee to file an accounting of the prior administration of the estate. If an accounting is impossible to obtain from the prior trustee because of death or lack of cooperation, prior reports submitted in the earlier administration may be updated.

Committee Note to 1987 Amendments

Subdivision (a) is new. The subdivision provides for the substitution of a trustee appointed in a chapter 11 case for the debtor in possession in any pending litigation.

The original provisions of the rule are now in subdivision (b).

Committee Note to 1991 Amendments

Subdivision (a) is amended to include any chapter 12 case in which the debtor is removed as debtor in possession pursuant to § 1204(a) of the Code.

Subdivision (b) is amended to require that the accounting of the prior administration which must be filed with the court is also transmitted to the United States trustee who is responsible for supervising the administration of cases and trustees. See 28 U.S.C. § 586(a)(3). Because a court order is not required for the appointment of a successor trustee, requiring the court to fix a time for filing the accounting is inefficient and unnecessary. The United States trustee has supervisory powers over trustees and may require the successor trustee to file the accounting within a certain time period. If the successor trustee fails to file the accounting within a reasonable time, the United States trustee or a party in interest may take appropriate steps including a request for an appropriate court order. See 28 U.S.C. § 586(a)(3)(G). The words "with the court" are deleted in subdivision (b)(2) as unnecessary. See Rules 5005(a) and 9001(3).

Rule 2013

**PUBLIC RECORD OF COMPENSATION AWARDED TO
TRUSTEES, EXAMINERS, AND PROFESSIONALS**

(a) Record to Be Kept. The clerk shall maintain a public record listing fees awarded by the court (1) to trustees and attorneys, accountants, appraisers, auctioneers and other professionals employed by trustees, and (2) to examiners. The record shall include the name and docket number of the case, the name of the individual or firm receiving the fee and the amount of the fee awarded. The record shall be maintained chronologically and shall be kept current and open to examination by the public without charge. "Trustees," as used in this rule, does not include debtors in possession.

(b) Summary of Record. At the close of each annual period, the clerk shall prepare a summary of the public record by individual or firm name, to reflect total fees awarded during the preceding year. The summary shall be open to examination by the public without charge. The clerk shall transmit a copy of the summary to the United States trustee.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Compensation of officers to reimburse actual and necessary services, see § 330 of this title.
Limitation on compensation of trustee, see § 326 of this title.
Power of court to fix compensation and percentage fee of trustee in individual debt adjustment case, see § 1302 of this title.

Library References:

C.J.S. Bankruptcy § 232.
West's Key No. Digests, Bankruptcy Ⓒ3151 et seq.

Committee Note

This rule is adapted from former Rule 213. The first sentence of that rule is omitted because of the provisions in 28 U.S.C. §§ 586 and 604(f) creating panels of private trustees.

The rule is not applicable to standing trustees serving in chapter 13 cases. See § 1302 of the Code.

A basic purpose of the rule is to prevent what Congress has defined as “cronyism.” Appointment or employment, whether in a chapter 7 or 11 case, should not center among a small select group of individuals unless the circumstances are such that it would be warranted. The public record of appointments to be kept by the clerk will provide a means for monitoring the appointment process.

Subdivision (b) provides a convenient source for public review of fees paid from debtors' estates in the bankruptcy courts. Thus, public recognition of appointments, fairly distributed and based on professional qualifications and expertise, will be promoted and notions of improper favor dispelled. This rule is in keeping with the findings of the Congressional subcommittees as set forth in the House Report of the Committee on the Judiciary, No. 95-595, 95th Cong., 1st Sess. 89-99 (1977). These findings included the observations that there were frequent appointments of the same person, contacts developed between the bankruptcy bar and the courts, and an unusually close relationship between the bar and the judges developed over the years. A major purpose of the new statute is to dilute these practices and instill greater public confidence in the system. Rule 2013 implements that laudatory purpose.

Committee Note to 1987 Amendments

In subdivisions (b) and (c) the word awarded is substituted for the word paid. While clerks do not know if fees are paid, they can determine what fees are awarded by the court.

Committee Note to 1991 Amendments

Subdivision (a) is deleted. The matter contained in this subdivision is more properly left for regulation by the United States trustee. When appointing trustees and examiners and when monitoring applications for employment of auctioneers, appraisers and other professionals, the United States trustee should be sensitive to disproportionate or excessive fees received by any person.

Subdivision (b), redesignated as subdivision (a), is amended to reflect the fact that the United States trustee appoints examiners subject to court approval.

Subdivision (c), redesignated as subdivision (b), is amended to furnish the United States trustee with a copy of the annual summary which may assist that office in the performance of its responsibilities under 28 U.S.C. § 586 and the Code.

The rule is not applicable to standing trustees serving in chapter 12 cases. See § 1202 of the Code.

Rule 2014

EMPLOYMENT OF PROFESSIONAL PERSONS

(a) Application for an Order of Employment. An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals pursuant to § 327, § 1103, or § 1114 of the Code shall be made only on application of the trustee or committee. The application shall be filed and, unless the case is a chapter 9 municipality case, a copy of the application shall be transmitted by the applicant to the United States trustee. The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

(b) Services Rendered by Member or Associate of Firm of Attorneys or Accountants. If, under the Code and this rule, a law partnership or corporation is employed as an attorney, or an accounting partnership or corporation is employed as an accountant, or if a named attorney or accountant is employed, any partner, member, or regular associate of the partnership, corporation or individual may act as attorney or accountant so employed, without further order of the court.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

- Application for compensation or reimbursement, see rule 2016.
- Compensation for services and reimbursement of costs, see § 503 of this title.
- Compensation of professional persons—
 - Actual, necessary services, see § 330 of this title.
 - Limitation on, see § 328 of this title.
 - Sharing of, see § 504 of this title.

Library References:

- C.J.S. Bankruptcy §§ 231, 234, 238.
- West's Key No. Digests, Bankruptcy ☞ 3029.1, 3030.

Committee Note

Subdivision (a) is adapted from the second sentence of former Bankruptcy Rule 215(a). The remainder of that rule is covered by § 327 of the Code.

Subdivision (b) is derived from former Bankruptcy Rule 215(f). The compensation provisions are set forth in § 504 of the Code.

Committee Note to 1991 Amendments

This rule is amended to include retention of professionals by committees of retired employees pursuant to § 1114 of the Code.

The United States trustee monitors applications filed under § 327 of the Code and may file with the court comments with respect to the approval of such applications. See 28 U.S.C. § 586(a)(3)(H). The United States trustee also monitors creditors' committees in accordance with 28 U.S.C. § 586(a)(3)(E). The addition of the second sentence of subdivision (a) is designed to enable the United States trustee to perform these duties.

Subdivision (a) is also amended to require disclosure of the professional's connections with the United States trustee or persons employed in the United States trustee's office. This requirement is not intended to prohibit the employment of such persons in all cases or to enlarge the definition of "disinterested person" in § 101(13) of the Code. However, the court may consider a connection with the United States trustee's office as a factor when exercising its discretion. Also, this information should be revealed in the interest of full disclosure and confidence in the bankruptcy system, especially since the United States trustee monitors and may be heard on applications for compensation and reimbursement of professionals employed under this rule.

The United States trustee appoints committees pursuant to § 1102 of the Code which is applicable in chapter 9 cases under § 901. In the interest of full disclosure and confidence in the bankruptcy system, a connection between the United States trustee and a professional employed by the committee should be revealed in every case, including a chapter 9 case. However, since the United States trustee does not have any role in the employment of professionals in chapter 9 cases, it is not necessary in such cases to transmit to the United States trustee a copy of the application under subdivision (a) of this rule. See 28 U.S.C. § 586(a)(3)(H).

Rule 2015

DUTY TO KEEP RECORDS, MAKE REPORTS, AND GIVE NOTICE OF CASE

(a) Trustee or Debtor in Possession. A trustee or debtor in possession shall (1) in a chapter 7 liquidation case and, if the court directs, in a chapter 11 reorganization case file and transmit to the United States trustee a complete inventory of the property of the debtor within 30 days after qualifying as a trustee or debtor in possession, unless such an inventory has already been filed; (2) keep a record of receipts and the disposition of money and property received; (3) file the reports and summaries required by § 704(8) of the Code which shall include a statement, if payments are made to employees, of the amounts of deductions for all taxes required to be withheld or paid for and in behalf of employees and the place where these amounts are deposited; (4) as soon as possible after the commencement of the case, give notice of the case to every entity known to be holding money or property subject to withdrawal or order of the debtor, including every bank, savings or building and loan association, public utility company, and

landlord with whom the debtor has a deposit, and to every insurance company which has issued a policy having a cash surrender value payable to the debtor, except that notice need not be given to any entity who has knowledge or has previously been notified of the case; (5) in a chapter 11 reorganization case, on or before the last day of the month after each calendar quarter until a plan is confirmed or the case is converted or dismissed, file and transmit to the United States trustee a statement of disbursements made during such calendar quarter and a statement of the amount of the fee required pursuant to 28 U.S.C. § 1930(a)(6) that has been paid for such calendar quarter.

(b) Chapter 12 Trustee and Debtor in Possession. In a chapter 12 family farmer's debt adjustment case, the debtor in possession shall perform the duties prescribed in clauses (2)-(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this paragraph.

(c) Chapter 13 Trustee and Debtor.

(1) *Business Cases.* In a chapter 13 individual's debt adjustment case, when the debtor is engaged in business, the debtor shall perform the duties prescribed by clauses (2)-(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court.

(2) *Nonbusiness Cases.* In a chapter 13 individual's debt adjustment case, when the debtor is not engaged in business, the trustee shall perform the duties prescribed by clause (2) of subdivision (a) of this rule.

(d) Transmission of Reports. In a chapter 11 case the court may direct that copies or summaries of annual reports and copies or summaries of other reports shall be mailed to the creditors, equity security holders, and indenture trustees. The court may also direct the publication of summaries of any such reports. A copy of every report or summary mailed or published pursuant to this subdivision shall be transmitted to the United States trustee.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 1996, eff. Dec. 1, 1996.

Cross References

Duties of trustee—

Individual debt adjustment case, see § 1302 of this title.

Reorganization case, see § 1106 of this title.

Operation of business by debtor, see § 1304 of this title.

Public access to papers filed in case under this title, see § 107 of this title.

Library References:

C.J.S. Bankruptcy §§ 191, 197, 374.

West's Key No. Digests, Bankruptcy ☞3008.1, 3009, 3022, 3622.

Committee Note

This rule combines the provisions found in former Rules 218, 10-208, 11-30 and 13-208 of the Rules of Bankruptcy Procedure. It specifies various duties which are in addition to those required by §§ 704, 1106, 1302 and 1304 of the Code.

In *subdivision (a)* the times permitted to be fixed by the court in clause (3) for the filing of reports and summaries may be fixed by local rule or order.

Subdivision (b). This subdivision prescribes duties on either the debtor or trustee in chapter 13 cases, depending on whether or not the debtor is engaged in business (§ 1304 of the Code). The duty of giving notice prescribed by subdivision (a)(4) is not included in a nonbusiness case because of its impracticability.

Subdivision (c) is derived from former Chapter X Rule 10-208(c) which, in turn, was derived from § 190 of the Act. The equity security holders to whom the reports should be sent are those of record at the time of transmittal of such reports.

Committee Note to 1987 Amendments

Subdivision (a) is amended to add as a duty of the trustee or debtor in possession the filing of a notice of or a copy of the petition. The filing of such notice or a copy of the petition is essential to the protection of the estate from unauthorized post-petition conveyances of real property. Section 549(c) of the Code protects the title of a good faith purchaser for fair equivalent value unless the notice or copy of the petition is filed.

Committee Note to 1991 Amendments

This rule is amended to provide the United States trustee with information needed to perform supervisory responsibilities in accordance with 28 U.S.C. § 586(a)(3) and to exercise the right to raise, appear and be heard on issues pursuant to § 307 of the Code.

Subdivision (a)(3) is amended to conform to the 1986 amendments to § 704(8) of the Code and the United States trustee system. It may not be necessary for the court to fix a time to file reports if the United States trustee requests that they be filed within a specified time and there is no dispute regarding such time.

Subdivision (a)(5) is deleted because the filing of a notice of or copy of the petition to protect real property against unauthorized postpetition transfers in a particular case is within the discretion of the trustee.

The new subdivision (a)(5) was added to enable the United States trustee, parties in interest, and the court to determine the appropriate quarterly fee required by 28 U.S.C. § 1930(a)(6). The requirements of subdivision (a)(5) should be satisfied whenever possible by including this information in other reports filed by the trustee or debtor in possession. Nonpayment of the fee may result in dismissal or conversion of the case pursuant to § 1112(b) of the Code.

Rule X-1007(b), which provides that the trustee or debtor in possession shall cooperate with the United States trustee by furnishing information that the United States trustee reasonably requires, is deleted as unnecessary. The deletion of Rule X-1007(b) should not be construed as a limitation of the powers of the United States trustee or of the duty of the trustee or debtor in possession to cooperate with the United States trustee in the performance of the statutory responsibilities of that office.

Subdivision (a)(6) is abrogated as unnecessary. See § 1106(a)(7) of the Code.

Subdivision (a)(7) is abrogated. The closing of a chapter 11 case is governed by Rule 3022.

New *subdivision (b)*, which prescribes the duties of the debtor in possession and trustee in a chapter 12 case, does not prohibit additional reporting requirements pursuant to local rule or court order.

Committee Note to 1996 Amendments

Subdivision (a)(1) provides that the trustee in a chapter 7 case and, if the court directs, the trustee or debtor in possession in a chapter 11 case, is required to file and transmit to the United States trustee a complete inventory of the debtor's property within 30 days after qualifying as trustee or debtor in possession, unless such an inventory has already been filed. Subdivisions (b) and (c) are amended to clarify that a debtor in possession and trustee in a chapter 12 case, and a debtor in a chapter 13 case where the debtor is engaged in business, are not required to file and transmit to the United States trustee a complete inventory of the property of the debtor unless the court so directs. If the court so directs, the court also fixes the time limit for filing and transmitting the inventory.

Rule 2016

COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES

(a) Application for Compensation or Reimbursement. An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised, whether any compensation previously received has been shared and whether an agreement or understanding exists between the applicant and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with the case, and the particulars of any sharing of compensation or agreement or understanding therefor, except that details of any agreement by the applicant for the sharing of compensation as a member or regular associate of a firm of lawyers or accountants shall not be required. The requirements of this subdivision shall apply to an application for compensation for services rendered by an attorney or accountant even though the application is filed by a creditor or other entity. Unless the case is a chapter 9 municipality case, the applicant shall transmit to the United States trustee a copy of the application.

(b) Disclosure of Compensation Paid or Promised to Attorney for Debtor. Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 15 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a

member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 15 days after any payment or agreement not previously disclosed.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Compensation of professional persons—

Actual, necessary services, see § 330 of this title.

Limitation on, see § 328 of this title.

Sharing of, see § 504 of this title.

Definition of—

Firm to include partnership or professional corporation, see rule 9001.

Regular associate to mean attorney employed by, associated with, as counsel to firm or individual, see rule 9001.

Employment of professional persons, see rule 2014.

Library References:

C.J.S. Bankruptcy §§ 231 et seq.

West's Key No. Digests, Bankruptcy ⇨3029.1, 3030, 3167, 3179, 3203(1-7).

Committee Note

This rule is derived from former Rule 219. Many of the former rule's requirements are, however, set forth in the Code. Section 329 requires disclosure by an attorney of transactions with the debtor, § 330 sets forth the bases for allowing compensation, and § 504 prohibits sharing of compensation. This rule implements those various provisions.

Subdivision (a) includes within its provisions a committee, member thereof, agent, attorney or accountant for the committee when compensation or reimbursement of expenses is sought from the estate.

Regular associate of a law firm is defined in Rule 9001(9) to include any attorney regularly employed by, associated with, or counsel to that law firm. Firm is defined in Rule 9001(6) to include a partnership or professional corporation.

Committee Note to 1987 Amendments

Subdivision (a) is amended to change "person" to "entity." There are occasions in which a governmental unit may be entitled to file an application under this rule. The requirement that the application contain a "detailed statement of services rendered, time expended and expenses incurred" gives to the court authority to ensure that the application is both comprehensive and detailed. No amendments are made to delineate further the requirements of the application because the amount of detail to be furnished is a function of the nature of the services rendered and the complexity of the case.

Subdivision (b) is amended to require that the attorney for the debtor file the § 329 statement before the meeting of creditors. This will assist the parties in conducting the examination of the debtor. In addition, the amended rule requires the attorney to supplement the § 329 statement if an undisclosed payment is made to the attorney or a new or amended agreement is entered into by the debtor and the attorney.

Committee Note to 1991 Amendments

Subdivision (a) is amended to enable the United States trustee to perform the duty to monitor applications for compensation and reimbursement filed under § 330 of the Code. See 28 U.S.C. § 586(a)(3)(A).

Subdivision (b) is amended to give the United States trustee the information needed to determine whether to request appropriate relief based on excessive fees under § 329(b) of the Code. See Rule 2017.

The words “with the court” are deleted in subdivisions (a) and (b) as unnecessary. See Rules 5005(a) and 9001(3).

Rule 2017**EXAMINATION OF DEBTOR’S TRANSACTIONS
WITH DEBTOR’S ATTORNEY**

(a) Payment or Transfer to Attorney Before Order for Relief. On motion by any party in interest or on the court’s own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property by the debtor, made directly or indirectly and in contemplation of the filing of a petition under the Code by or against the debtor or before entry of the order for relief in an involuntary case, to an attorney for services rendered or to be rendered is excessive.

(b) Payment or Transfer to Attorney After Order for Relief. On motion by the debtor, the United States trustee, or on the court’s own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property, or any agreement therefor, by the debtor to an attorney after entry of an order for relief in a case under the Code is excessive, whether the payment or transfer is made or is to be made directly or indirectly, if the payment, transfer, or agreement therefor is for services in any way related to the case.

Title amended Mar. 30, 1987, eff. Aug. 1, 1987. Amended Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Court filing of compensation paid or agreed to be paid, see § 329 of this title.

Motions: form and service, see rule 9013.

Proceedings under this rule as nonadversarial proceedings, see rule 7001.

Process; service of summons, complaint, see rule 7004.

Library References:

C.J.S. Bankruptcy §§ 232 et seq., 354.

West’s Key No. Digests, Bankruptcy ☞2827, 2837, 3200.

Committee Note

This rule is derived from § 60d of the Act and former Bankruptcy Rule 220 and implements § 329 of the Code. Information required to be disclosed by the attorney for a debtor by § 329 of the Code and by the debtor in his Statement of Financial Affairs (Item #15 of Form No. 7, Item #20 of Form No. 8) will assist the court in determining whether to proceed under this rule. Section 60d was enacted in recognition of “the temptation of a failing debtor to deal too liberally with his property in employing counsel to protect him in

view of financial reverses and probable failure.” *In re Wood & Henderson*, 210 U.S. 246, 253 (1908). This rule, like § 60d of the Act and § 329 of the Code, is premised on the need for and appropriateness of judicial scrutiny of arrangements between a debtor and his attorney to protect the creditors of the estate and the debtor against overreaching by an officer of the court who is in a peculiarly advantageous position to impose on both the creditors and his client. 2 Collier, *Bankruptcy* ¶ 329.02 (15th ed. 1980); MacLachlan, *Bankruptcy* 318 (1956). Rule 9014 applies to any contested matter arising under this rule.

This rule is not to be construed to permit post-petition payments or transfers which may be avoided under other provisions of the Code.

Committee Note to 1991 Amendments

This rule is amended to include within subdivision (a) a payment or transfer of property by the debtor to an attorney after the filing of an involuntary petition but before the order for relief. Any party in interest should be able to make a motion for a determination of whether such payment or transfer is excessive because the funds or property transferred may be property of the estate.

The United States trustee supervises and monitors the administration of bankruptcy cases other than chapter 9 cases and pursuant to § 307 of the Code may raise, appear and be heard on issues relating to fees paid to the debtor's attorney. It is consistent with that role to expect the United States trustee to review statements filed under Rule 2016(b) and to file motions relating to excessive fees pursuant to § 329 of the Code.

Rule 2018

INTERVENTION; RIGHT TO BE HEARD

(a) Permissive Intervention. In a case under the Code, after hearing on such notice as the court directs and for cause shown, the court may permit any interested entity to intervene generally or with respect to any specified matter.

(b) Intervention by Attorney General of a State. In a chapter 7, 11, 12, or 13 case, the Attorney General of a State may appear and be heard on behalf of consumer creditors if the court determines the appearance is in the public interest, but the Attorney General may not appeal from any judgment, order, or decree in the case.

(c) Chapter 9 Municipality Case. The Secretary of the Treasury of the United States may, or if requested by the court shall, intervene in a chapter 9 case. Representatives of the state in which the debtor is located may intervene in a chapter 9 case with respect to matter specified by the court.

(d) Labor Unions. In a chapter 9, 11, or 12 case, a labor union or employees' association, representative of employees of the debtor, shall have the right to be heard on the economic soundness of a plan affecting the interests of the employees. A labor union or employees' association which exercises its right to be heard under this subdivision shall not be entitled to appeal any judgment, order, or decree relating to the plan, unless otherwise permitted by law.

(e) Service on Entities Covered by This Rule. The court may enter orders governing the service of notice and papers on entities permitted to intervene or be heard pursuant to this rule.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Consumer debt defined as debt primarily for personal, family, or household purpose, see § 101 of this title.

Definitions for purposes of this rule of—

Entity, see § 101 of this title.

Governmental unit, see § 101 of this title.

Person, see § 101 of this title.

Intervention of—

Department of Transportation, see § 1164 of this title.

Interstate Commerce Commission, see § 1164 of this title.

Party in interest, see § 1109 of this title.

Securities and Exchange Commission, see § 1109 of this title.

State or local regulatory commission, see § 1164 of this title.

Intervention in adversary proceedings, see rule 7024.

Library References:

C.J.S. Bankruptcy §§ 38, 361-367.

West's Key No. Digests, Bankruptcy ⇨2204.1-2206, 3481.

Committee Note

This rule is derived from former Rules 8-210, 9-15 and 10-210 and it implements §§ 1109 and 1164 of the Code.

Pursuant to § 1109 of the Code, parties in interest have a right to be heard and the Securities and Exchange Commission may raise and be heard on any issue but it may not take an appeal. That section is applicable in chapter 9 cases (§ 901 of the Code and in chapter 11 cases, including cases under subchapter IV thereof for the reorganization of a railroad).

In a railroad reorganization case under subchapter IV of chapter 11, § 1164 also gives the right to be heard to the Interstate Commerce Commission, the Department of Transportation and any state or local regulatory commission with jurisdiction over the debtor, but these entities may not appeal.

This rule does not apply in adversary proceedings. For intervention in adversary proceedings, see Rule 7024. The rules do not provide any right of compensation to or reimbursement of expenses for intervenors or others covered by this rule. Section 503(b)(3)(D) and (4) is not applicable to the entities covered by this rule.

Subdivision (a) is derived from former Chapter VIII Rule 8-210 and former Chapter X Rule 10-210. It permits intervention of an entity (see § 101(14), (21) of the Code) not otherwise entitled to do so under the Code or this rule. Such a party seeking to intervene must show cause therefor.

Subdivision (b) specifically grants the appropriate state's Attorney General the right to appear and be heard on behalf of consumer creditors when it is in the public interest. See House Rep. No. 95-595, 95th Cong., 1st Sess. (1977) 189. While "consumer creditor" is not defined in the Code or elsewhere, it would include the type of individual entitled to priority under § 507(a)(5) of the Code, that is, an individual who has deposited money for the purchase, lease or rental of property or the purchase of services for the personal, family, or household use of the individual. It would also include

individuals who purchased or leased property for such purposes in connection with which there may exist claims for breach of warranty.

This subdivision does not grant the Attorney General the status of party in interest. In other contexts, the Attorney General will, of course, be a party in interest as for example, in representing a state in connection with a tax claim.

Subdivision (c) recognizes the possible interests of the Secretary of the Treasury or of the state of the debtor's locale when a municipality is the debtor. It is derived from former Chapter IX Rule 9-15 and § 85(d) of the act.

Subdivision (d) is derived from former Chapter X Rule 10-210 which, in turn, was derived from § 206 of the Act. Section 206 has no counterpart in the Code.

Subdivision (e) is derived from former Chapter VIII Rule 8-201(d). It gives the court flexibility in directing the type of future notices to be given intervenors.

Committee Note to 1987 Amendments

Subdivision (d) is amended to make it clear that the prohibition against appeals by labor unions is limited only to their participation in connection with the hearings on the plan as provided in subdivision (d). If a labor union would otherwise have the right to file an appeal or to be a party to an appeal, this rule does not preclude the labor union from exercising that right.

Committee Note to 1991 Amendments

Subdivisions (b) and (d) are amended to include chapter 12.

Rule 2019

REPRESENTATION OF CREDITORS AND EQUITY SECURITY HOLDERS IN CHAPTER 9 MUNICIPALITY AND CHAPTER 11 REORGANIZATION CASES

(a) Data Required. In a chapter 9 municipality or chapter 11 reorganization case, except with respect to a committee appointed pursuant to § 1102 or 1114 of the Code, every entity or committee representing more than one creditor or equity security holder and, unless otherwise directed by the court, every indenture trustee, shall file a verified statement setting forth (1) the name and address of the creditor or equity security holder; (2) the nature and amount of the claim or interest and the time of acquisition thereof unless it is alleged to have been acquired more than one year prior to the filing of the petition; (3) a recital of the pertinent facts and circumstances in connection with the employment of the entity or indenture trustee, and, in the case of a committee, the name or names of the entity or entities at whose instance, directly or indirectly, the employment was arranged or the committee was organized or agreed to act; and (4) with reference to the time of the employment of the entity, the organization or formation of the committee, or the appearance in the case of any indenture trustee, the amounts of claims or interests owned by the entity, the members of the committee or the indenture trustee, the times when acquired, the amounts paid therefor, and any

sales or other disposition thereof. The statement shall include a copy of the instrument, if any, whereby the entity, committee, or indenture trustee is empowered to act on behalf of creditors or equity security holders. A supplemental statement shall be filed promptly, setting forth any material changes in the facts contained in the statement filed pursuant to this subdivision.

(b) Failure to Comply; Effect. On motion of any party in interest or on its own initiative, the court may (1) determine whether there has been a failure to comply with the provisions of subdivision (a) of this rule or with any other applicable law regulating the activities and personnel of any entity, committee, or indenture trustee or any other impropriety in connection with any solicitation and, if it so determines, the court may refuse to permit that entity, committee, or indenture trustee to be heard further or to intervene in the case; (2) examine any representation provision of a deposit agreement, proxy, trust mortgage, trust indenture, or deed of trust, or committee or other authorization, and any claim or interest acquired by any entity or committee in contemplation or in the course of a case under the Code and grant appropriate relief; and (3) hold invalid any authority, acceptance, rejection, or objection given, procured, or received by an entity or committee who has not complied with this rule or with § 1125(b) of the Code.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Appointment of creditors' committee organized before order for relief, see rule 2007.

Motions; form and service, see rule 9013.

Trustees for estates when joint administration ordered, see rule 2009.

Library References:

C.J.S. Bankruptcy §§ 193, 373.

West's Key No. Digests, Bankruptcy Ⓒ3024.

Committee Note

This rule is a comprehensive regulation of representation in chapter 9 municipality and in chapter 11 reorganization cases. It is derived from §§ 209–213 of the Act and former Chapter X Rule 10–211.

Subdivision (b) is derived from §§ 212, 213 of the Act. As used in clause (2), “other authorization” would include a power or warrant of attorney which are specifically mentioned in § 212 of the Act. This rule deals with representation provisions in mortgages, trust deeds, etc. to protect the beneficiaries from unfair practices and the like. It does not deal with the validation or invalidation of security interests generally. If immediate compliance is not possible, the court may permit a representative to be heard on a specific matter, but there is no implicit waiver of compliance on a permanent basis.

Committee Note to 1991 Amendments

Subdivision (a) is amended to exclude from the requirements of this rule committees of retired employees appointed pursuant to § 1114 of the Code. The words “with the clerk” are deleted as unnecessary. See Rules 5005(a) and 9001(3).

Rule 2020**REVIEW OF ACTS BY UNITED STATES TRUSTEE**

A proceeding to contest any act or failure to act by the United States trustee is governed by Rule 9014.

Adopted Apr. 30, 1991, eff. Aug. 1, 1991.

Library References:

C.J.S. Bankruptcy §§ 5, 194, 195, 197.

West's Key No. Digests, Bankruptcy ☞2127.1, 3001, 3008.1.

Committee Note to 1991 Amendments

The United States trustee performs administrative functions, such as the convening of the meeting of creditors and the appointment of trustees and committees. Most of the acts of the United States trustee are not controversial and will go unchallenged. However, the United States trustee is not a judicial officer and does not resolve disputes regarding the propriety of its own actions. This rule, which is new, provides a procedure for judicial review of the United States trustee's acts or failure to act in connection with the administration of the case. For example, if the United States trustee schedules a § 341 meeting to be held 90 days after the petition is filed, and a party in interest wishes to challenge the propriety of that act in view of § 341(a) of the Code and Rule 2003 which requires that the meeting be held not more than 40 days after the order for relief, this rule permits the party to do so by motion.

This rule provides for review of acts already committed by the United States trustee, but does not provide for advisory opinions in advance of the act. This rule is not intended to limit the discretion of the United States trustee, provided that the United States trustee's act is authorized by, and in compliance with, the Code, title 28, these rules, and other applicable law.

PART III

CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS

Rule

- 3001. Proof of Claim
- 3002. Filing Proof of Claim or Interest
- 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases
- 3004. Filing of Claims by Debtor or Trustee
- 3005. Filing of Claim, Acceptance, or Rejection by Guarantor, Surety, Indorser, or Other Codebtor
- 3006. Withdrawal of Claim: Effect on Acceptance or Rejection of Plan
- 3007. Objections to Claims
- 3008. Reconsideration of Claims
- 3009. Declaration and Payment of Dividends in a Chapter 7 Liquidation Case
- 3010. Small Dividends and Payments in Chapter 7 Liquidation, Chapter 12, Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases
- 3011. Unclaimed Funds in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases
- 3012. Valuation of Security
- 3013. Classification of Claims and Interests
- 3014. Election Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case
- 3015. Filing, Objection to Confirmation, and Modification of a Plan in a Chapter 12 Family Farmer's Debt Adjustment or a Chapter 13 Individual's Debt Adjustment Case
- 3016. Filing of Plan and Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases
- 3017. Court Consideration of Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases
- 3017.1. Court Consideration of Disclosure Statement in a Small Business Case
- 3018. Acceptance or Rejection of Plans in a Chapter 9 Municipality or a Chapter 11 Reorganization Case
- 3019. Modification of Accepted Plan Before Confirmation in a Chapter 9 Municipality or a Chapter 11 Reorganization Case
- 3020. Deposit; Confirmation of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case
- 3021. Distribution Under Plan
- 3022. Final Decree in Chapter 11 Reorganization Case

Rule 3001

PROOF OF CLAIM

(a) Form and Content. A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

(b) Who May Execute. A proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in Rules 3004 and 3005.

(c) Claim Based on a Writing. When a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

(d) Evidence of Perfection of Security Interest. If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.

(e) Transferred Claim.

(1) *Transfer of Claim Other Than for Security Before Proof Filed.* If a claim has been transferred other than for security before proof of the claim has been filed, the proof of claim may be filed only by the transferee or an indenture trustee.

(2) *Transfer of Claim Other Than for Security After Proof Filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after the proof of claim has been filed, evidence of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 20 days of the mailing of the notice or within any additional time allowed by the court. If the alleged transferor files a timely objection and the court finds, after notice and a hearing, that the claim has been transferred other than for security, it shall enter an order substituting the transferee for the transferor. If a timely objection is not filed by the alleged transferor, the transferee shall be substituted for the transferor.

(3) *Transfer of Claim for Security Before Proof Filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security before proof of the claim has been filed, the transferor or transferee or both may file a proof of claim for the full amount. The proof shall be supported by a statement setting forth the terms of the transfer. If either the transferor or the transferee files a proof of claim, the clerk shall immediately notify the other by mail of the right to join in the filed claim. If both transferor and transferee file proofs of the same claim, the proofs shall be consolidated. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate.

(4) *Transfer of Claim for Security After Proof Filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security after the proof of claim has been filed, evidence of the terms of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 20 days of the mailing of the notice or within any additional time allowed by the court. If a timely objection is filed by the alleged transferor, the court, after notice and a hearing, shall determine whether the claim has been transferred for security. If the transferor or transfer-

ee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate.

(5) *Service of Objection or Motion; Notice of Hearing.* A copy of an objection filed pursuant to paragraph (2) or (4) or a motion filed pursuant to paragraph (3) or (4) of this subdivision together with a notice of a hearing shall be mailed or otherwise delivered to the transferor or transferee, whichever is appropriate, at least 30 days prior to the hearing.

(f) **Evidentiary Effect.** A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

(g) To the extent not inconsistent with the United States Warehouse Act or applicable State law, a warehouse receipt, scale ticket, or similar document of the type routinely issued as evidence of title by a grain storage facility, as defined in section 557 of title 11, shall constitute prima facie evidence of the validity and amount of a claim of ownership of a quantity of grain.

Amended by Pub.L. 93-353, § 354, July 10, 1984, 98 Stat. 333. Amended Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Filed claims or interests deemed allowed, see § 502 of this title.
Filing of proofs of claims or interests, see § 501 of this title.
Notice to claimants in converted liquidation case, see rule 1019.

Library References:

C.J.S. Bankruptcy §§ 201 et seq., 250 et seq., 351, 353, 354.
West's Key No. Digests, Bankruptcy Ⓒ2821-2972.

Committee Note

This rule is adapted from former Bankruptcy Rules 301 and 302. The Federal Rules of Evidence, made applicable to cases under the Code by Rule 1101, do not prescribe the evidentiary effect to be accorded particular documents. Subdivision (f) of this rule supplements the Federal Rules of Evidence as they apply to cases under the Code.

Subdivision (c). This subdivision is similar to former Bankruptcy Rule 302(c) and continues the requirement for the filing of any written security agreement and provides that the filing of a duplicate of a writing underlying a claim authenticates the claim with the same effect as the filing of the original writing. Cf. Rules 1001(4) and 1003 of F.R. of Evid. Subdivision (d) together with the requirement in the first sentence of subdivision (c) for the filing of any written security agreement, is designed to facilitate the determination whether the claim is secured and properly perfected so as to be valid against the trustee.

Subdivision (d). "Satisfactory evidence" of perfection, which is to accompany the proof of claim, would include a duplicate of an instrument filed or recorded, a duplicate of a certificate of title when a security interest is perfected by notation on such a certificate, a statement that pledged property has been in possession of the secured party since a specified date, or a statement of the reasons why no action was necessary for perfection. The

secured creditor may not be required to file a proof of claim under this rule if he is not seeking allowance of a claim for a deficiency. But see § 506(d) of the Code.

Subdivision (e). The rule recognizes the differences between an unconditional transfer of a claim and a transfer for the purpose of security and prescribes a procedure for dealing with the rights of the transferor and transferee when the transfer is for security. The rule clarifies the procedure to be followed when a transfer precedes or follows the filing of the petition. The interests of sound administration are served by requiring the post-petition transferee to file with the proof of claim a statement of the transferor acknowledging the transfer and the consideration for the transfer. Such a disclosure will assist the court in dealing with evils that may arise out of post-bankruptcy traffic in claims against an estate. *Monroe v. Scofield*, 135 F.2d 725 (10th Cir. 1943); *In re Philadelphia & Western Ry.*, 64 F.Supp. 738 (E.D.Pa.1946); cf. *In re Latham Lithographic Corp.*, 107 F.2d 749 (2d Cir. 1939). Both paragraphs (1) and (3) of this subdivision, which deal with a transfer before the filing of a proof of claim, recognize that the transferee may be unable to obtain the required statement from the transferor, but in that event a sound reason for such inability must accompany the proof of claim filed by the transferee.

Paragraphs (3) and (4) clarify the status of a claim transferred for the purpose of security. An assignee for security has been recognized as a rightful claimant in bankruptcy. *Feder v. John Engelhorn & Sons*, 202 F.2d 411 (2d Cir. 1953). An assignor's right to file a claim notwithstanding the assignment was sustained in *In re R & L Engineering Co.*, 182 F.Supp. 317 (S.D.Cal.1960). Facilitation of the filing of proofs by both claimants as holders of interests in a single claim is consonant with equitable treatment of the parties and sound administration. See *In re Latham Lithographic Corp.*, 107 F.2d 749 (2d Cir. 1939).

Paragraphs (2) and (4) of subdivision (e) deal with the transfer of a claim after proof has been filed. Evidence of the terms of the transfer required to be disclosed to the court will facilitate the court's determination of the appropriate order to be entered because of the transfer.

Paragraph (5) describes the procedure to be followed when an objection is made by the transferor to the transferee's filed evidence of transfer.

Committee Note to 1984 Amendments

Subdivision (g) was added by § 354 of the 1984 amendments.

Committee Note to 1991 Amendments

Subdivision (a) is amended in anticipation of future revision and renumbering of the Official Forms.

Subdivision (e) is amended to limit the court's role to the adjudication of disputes regarding transfers of claims. If a claim has been transferred prior to the filing of a proof of claim, there is no need to state the consideration for the transfer or to submit other evidence of the transfer. If a claim has been transferred other than for security after a proof of claim has been filed, the transferee is substituted for the transferor in the absence of a timely objection by the alleged transferor. In that event, the clerk should note the transfer without the need for court approval. If a timely objection is filed, the court's role is to determine whether a transfer has been made that is enforceable

under nonbankruptcy law. This rule is not intended either to encourage or discourage postpetition transfers of claims or to affect any remedies otherwise available under nonbankruptcy law to a transferor or transferee such as for misrepresentation in connection with the transfer of a claim. "After notice and a hearing" as used in subdivision (e) shall be construed in accordance with paragraph (5).

The words "with the clerk" in subdivision (e)(2) and (e)(4) are deleted as unnecessary. See Rules 5005(a) and 9001(3).

Rule 3002

FILING PROOF OF CLAIM OR INTEREST

(a) Necessity for Filing. An unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005.

(b) Place of Filing. A proof of claim or interest shall be filed in accordance with Rule 5005.

(c) Time for Filing. In a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt adjustment case, a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under § 341(a) of the Code, except as follows:

(1) A proof of claim filed by a governmental unit is timely filed if it is filed not later than 180 days after the date of the order for relief. On motion of a governmental unit before the expiration of such period and for cause shown, the court may extend the time for filing of a claim by the governmental unit.

(2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either.

(3) An unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed.

(4) A claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct.

(5) If notice of insufficient assets to pay a dividend was given to creditors pursuant to Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall notify the creditors of that fact and that they may file proofs of claim within 90 days after the mailing of the notice.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 1996, eff. Dec. 1, 1996.

Cross References

Filed claims or interests deemed allowed, see § 502 of this title.

Filing of—

Claims by debtor or trustee, see rule 3004.

Claims by guarantor, surety, indorser, or other co-debtor, see rule 3005.

Proofs of claims or interests, see § 501 of this title.

Filing proof of claim in liquidation or individual debt adjustment case, ninety-day period—

Enlargement permitted as limited in this rule, see rule 9006.

Reduction not permitted, see rule 9006.

Motions; form and service, see rule 9013.

Notice by mail of time allowed to file claims, see rule 2002.

Time extended to file claims against surplus—

Converted liquidation case, see rule 1019.

Notice to creditors in liquidation case, see rule 2002.

Twenty-day notice of time to file claims against surplus, see rule 2002.

Library References:

C.J.S. Bankruptcy §§ 268 et seq.

West's Key No. Digests, Bankruptcy Ⓒ2891-2900(2).

Committee Note

Subdivision (a) of this rule is substantially a restatement of the general requirement that claims be proved and filed. The exceptions refer to Rule 3003 providing for the filing of claims in chapter 9 and 11 cases, and to Rules 3004 and 3005 authorizing claims to be filed by the debtor or trustee and the filing of a claim by a contingent creditor of the debtor.

A secured claim need not be filed or allowed under § 502 or § 506(d) unless a party in interest has requested a determination and allowance or disallowance under § 502.

Subdivision (c) is adapted from former Bankruptcy Rule 302(e) but changes the time limits on the filing of claims in chapter 7 and 13 cases from six months to 90 days after the first date set for the meeting of creditors. The special rule for early filing by a secured creditor in a chapter 13 case, in former Rule 13-302(e)(1) is not continued.

Although the claim of a secured creditor may have arisen before the petition, a judgment avoiding the security interest may not have been entered until after the time for filing claims has expired. Under Rule 3002(c)(3) the creditor who did not file a secured claim may nevertheless file an unsecured claim within the time prescribed. A judgment does not become final for the purpose of starting the 30 day period provided for by paragraph (3) until the time for appeal has expired or, if an appeal is taken, until the appeal has been disposed of. *In re Tapp*, 61 F.Supp. 594 (W.D.Ky.1945).

Paragraph (1) is derived from former Bankruptcy Rule 302(e). The governmental unit may move for an extension of the 90 day period. Pursuant to § 501(c) of the Code, if the government does not file its claim within the proper time period, the debtor or trustee may file on its behalf. An extension is not needed by the debtor or trustee because the right to file does not arise until the government's time has expired.

Paragraph (4) is derived from former chapter rules. See, e.g., Rule 11-33(a)(2)(B). In light of the reduced time it is necessary that a party with a

claim arising from the rejection of an executory contract have sufficient time to file that claim. This clause allows the court to fix an appropriate time.

Paragraph (5) of subdivision (c) is correlated with the provision in Rule 2002(e) authorizing notification to creditors of estates from which no dividends are anticipated. The clause permits creditors who have refrained from filing claims after receiving notification to be given an opportunity to file when subsequent developments indicate the possibility of a dividend. The notice required by this clause must be given in the manner provided in Rule 2002. The information relating to the discovery of assets will usually be obtained by the clerk from the trustee's interim reports or special notification by the trustee.

Provision is made in Rule 2002(a) and (h) for notifying all creditors of the fixing of a time for filing claims against a surplus under paragraph (6). This paragraph does not deal with the distribution of the surplus. Reference must also be made to § 726(a)(2)(C) and (3) which permits distribution on late filed claims.

Paragraph (6) is only operative in a chapter 7 case. In chapter 13 cases, the plan itself provides the distribution to creditors which is not necessarily dependent on the size of the estate.

Committee Note to 1987 Amendments

Subdivision (a) is amended by adding a reference to Rule 1019(4). Rule 1019(4) provides that claims actually filed by a creditor in a chapter 11 or 13 case shall be treated as filed in a superseding chapter 7 case. Claims deemed filed in a chapter 11 case pursuant to § 1111(a) of the Code are not considered as filed in a superseding chapter 7 case. The creditor must file a claim in the superseding chapter 7 case.

Committee Note to 1991 Amendments

Subdivision (a) is amended to conform to the renumbering of subdivisions of Rule 1019. Subdivision (c) is amended to include chapter 12 cases. Subdivision (c)(4) is amended to clarify that it includes a claim arising from the rejection of an unexpired lease.

Committee Note to 1996 Amendments

The amendments are designed to conform to §§ 502(b)(9) and 726(a) of the Code as amended by the Bankruptcy Reform Act of 1994.

The Reform Act amended § 726(a)(1) and added § 502(b)(9) to the Code to govern the effects of a tardily filed claim. Under § 502(b)(9), a tardily filed claim must be disallowed if an objection to the proof of claim is filed, except to the extent that a holder of a tardily filed claim is entitled to distribution under § 726(a)(1), (2), or (3).

The phrase "in accordance with this rule" is deleted from Rule 3002(a) to clarify that the effect of filing a proof of claim after the expiration of the time prescribed in Rule 3002(c) is governed by § 502(b)(9) of the Code, rather than by this rule.

Section 502(b)(9) of the Code provides that a claim of a governmental unit shall be timely filed if it is filed "before 180 days after the date of the order for relief" or such later time as the Bankruptcy Rules provide. To avoid any confusion as to whether a governmental unit's proof of claim is timely filed

under § 502(b)(9) if it is filed on the 180th day after the order for relief, paragraph (1) of subdivision (c) provides that a governmental unit's claim is timely if it is filed not later than 180 days after the order for relief.

References to "the United States, a state, or subdivision thereof" in paragraph (1) of subdivision (c) are changed to "governmental unit" to avoid different treatment among foreign and domestic governments.

GAP Report on Rule 3002. After publication of the proposed amendments, the Bankruptcy Reform Act of 1994 amended sections 726 and 502(b) of the Code to clarify the rights of creditors who tardily file a proof of claim. In view of the Reform Act, proposed new subdivision (d) of Rule 3002 has been deleted from the proposed amendments because it is no longer necessary. In addition, subdivisions (a) and (c) have been changed after publication to clarify that the effect of tardily filing a proof of claim is governed by § 502(b)(9) of the Code, rather than by this rule.

The amendments to § 502(b) also provide that a governmental unit's proof of claim is timely filed if it is filed before 180 days after the order for relief. Proposed amendments to Rule 3002(c)(1) were added to the published amendments to conform to this statutory change and to avoid any confusion as to whether a claim by a governmental unit is timely if it is filed on the 180th day.

The committee note has been re-written to explain the rule changes designed to conform to the Reform Act.

Rule 3003

FILING PROOF OF CLAIM OR EQUITY SECURITY INTEREST IN CHAPTER 9 MUNICIPALITY OR CHAPTER 11 REORGANIZATION CASES

(a) Applicability of Rule. This rule applies in chapter 9 and 11 cases.

(b) Schedule of Liabilities and List of Equity Security Holders.

(1) Schedule of Liabilities. The schedule of liabilities filed pursuant to § 521(1) of the Code shall constitute prima facie evidence of the validity and amount of the claims of creditors, unless they are scheduled as disputed, contingent, or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim or interest except as provided in subdivision (c)(2) of this rule.

(2) List of Equity Security Holders. The list of equity security holders filed pursuant to Rule 1007(a)(3) shall constitute prima facie evidence of the validity and amount of the equity security interests and it shall not be necessary for the holders of such interests to file a proof of interest.

(c) Filing Proof of Claim.

(1) Who May File. Any creditor or indenture trustee may file a proof of claim within the time prescribed by subdivision (c)(3) of this rule.

(2) Who Must File. Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision

(c)(3) of this rule: any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.

(3) *Time for Filing.* The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed. Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (c)(3), and (c)(4).

(4) *Effect of Filing Claim or Interest.* A proof of claim or interest executed and filed in accordance with this subdivision shall supersede any scheduling of that claim or interest pursuant to § 521(1) of the Code.

(5) *Filing by Indenture Trustee.* An indenture trustee may file a claim on behalf of all known or unknown holders of securities issued pursuant to the trust instrument under which it is trustee.

(d) Proof of Right to Record Status. For the purposes of Rules 3017, 3018 and 3021 and for receiving notices, an entity who is not the record holder of a security may file a statement setting forth facts which entitle that entity to be treated as the record holder. An objection to the statement may be filed by any party in interest.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Acceptance or rejection of municipality debt adjustment or reorganization plan by obligor filing creditor's claim, see rule 3005.

Distribution under confirmed plan to indenture trustee filing under this rule, see rule 2021.

Exception to filing requirement for—

Municipality debt adjustment case, see § 925 of this title.

Reorganization case, see § 1111 of this title.

Unsecured creditor or equity security holder, see rule 3002.

Filing of claims by—

Debtor or trustee, see rule 3004.

Guarantor, surety, indorser, or other codebtor, see rule 3005.

Twenty-day notice of time fixed to file proof of claim, see rule 2002.

Library References:

C.J.S. Bankruptcy §§ 246 et seq.

West's Key No. Digests, Bankruptcy Ⓒ2891-2933.

Official Forms

Order for meeting of creditors and related orders, combined with notice thereof and of automatic stay, see form 9.

Committee Note

Subdivision (a). This rule applies only in chapter 9 and chapter 11 cases. It is adapted from former Chapter X Rule 10-401 and provides an exception to the requirement for filing proofs of claim and interest as expressed in §§ 925 and 1111(a) of the Code.

Subdivision (b). This general statement implements §§ 925 and 1111(a) of the Code.

Subdivision (c). This subdivision permits, in paragraph (1), the filing of a proof of claim but does not make it mandatory. Paragraph (2) requires, as

does the Code, filing when a claim is scheduled as disputed, contingent, or unliquidated as to amount. It is the creditor's responsibility to determine if the claim is accurately listed. Notice of the provision of this rule is provided for in Official Form No. 16, the order for the meeting of creditors. In an appropriate case the court may order creditors whose claims are scheduled as disputed, contingent, or unliquidated be notified of that fact but the procedure is left to the discretion of the court.

Subdivision (d) is derived from former Chapter X Rule 10-401(f).

Except with respect to the need and time for filing claims, the other aspects concerning claims covered by Rules 3001 and 3002 are applicable in chapter 9 and 11 cases.

Holders of equity security interests need not file proofs of interest. Voting and distribution participation is dependent on ownership as disclosed by the appropriate records of a transfer agent or the corporate or other business records at the time prescribed in Rules 3017 and 3021.

Committee Note to 1991 Amendments

Paragraph (3) of subdivision (c) is amended to permit the late filing of claims by infants or incompetent persons under the same circumstances that permit late filings in cases under chapter 7, 12, or 13. The amendment also provides sufficient time in which to file a claim that arises from a postpetition judgment against the claimant for the recovery of money or property or the avoidance of a lien. It also provides for purposes of clarification that upon rejection of an executory contract or unexpired lease, the court shall set a time for filing a claim arising therefrom despite prior expiration of the time set for filing proofs of claim.

The caption of paragraph (4) of subdivision (c) is amended to indicate that it applies to a proof of claim.

Rule 3004

FILING OF CLAIMS BY DEBTOR OR TRUSTEE

If a creditor fails to file a proof of claim on or before the first date set for the meeting of creditors called pursuant to § 341(a) of the Code, the debtor or trustee may do so in the name of the creditor, within 30 days after expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable. The clerk shall forthwith mail notice of the filing to the creditor, the debtor and the trustee. A proof of claim filed by a creditor pursuant to Rule 3002 or Rule 3003(c), shall supersede the proof filed by the debtor or trustee.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Exception to—

Execution of proof of claim by creditor or agent, see rule 3001.

Filing requirement for unsecured creditor or equity security holder, see rule 3002.

Filing of claims by debtor or trustee, see § 501 of this title.

Library References:

C.J.S. Bankruptcy §§ 268 et seq.

West's Key No. Digests, Bankruptcy ⇨2896-2899.

Committee Note

This rule is adapted from former Bankruptcy Rule 303 but conforms with the changes made by § 501(c) of the Code. Rule 303 permitted only the filing of tax and wage claims by the debtor. Section 501(c) of the Code, however, permits the filing by the debtor or trustee on behalf of any creditor.

It is the policy of the Code that debtors' estates should be administered for the benefit of creditors without regard to the dischargeability of their claims. After their estates have been closed, however, discharged debtors may find themselves saddled with liabilities, particularly for taxes, which remain unpaid because of the failure of creditors holding nondischargeable claims to file proofs of claim and receive distributions thereon. The result is that the debtor is deprived of an important benefit of the Code without any fault or omission on the debtor's part and without any objective of the Code being served thereby.

Section 501(c) of the Code authorizes a debtor or trustee to file a proof of claim for any holder of a claim. Although all claims may not be nondischargeable, it may be difficult to determine, in particular, whether tax claims survive discharge. See Plumb, *Federal Tax Liens and Priorities in Bankruptcy*, 43 Ref.J. 37, 43-44 (1969); 1 Collier, *Bankruptcy* ¶ 17.14 (14th ed. 1967); 3 *id.* ¶ 523.06 (15th ed. 1979). To eliminate the necessity of the resolution of this troublesome issue, the option accorded the debtor by the Code does not depend on the nondischargeability of the claim. No serious administrative problems and no unfairness to creditors seemed to develop from adoption of Rule 303, the forerunner to § 501(c). The authority to file is conditioned on the creditor's failure to file the proof of claim on or before the first date set for the meeting of creditors, which is the date a claim must ordinarily be filed in order to be voted in a chapter 7 case. Notice to the creditor is provided to enable him to file a proof of claim pursuant to Rule 3002, which proof, when filed, would supersede the proof filed by the debtor or trustee. Notice to the trustee would serve to alert the trustee to the special character of the proof and the possible need for supplementary evidence of the validity and amount of the claim. If the trustee does not qualify until after a proof of claim is filed by the debtor pursuant to this rule, he should be notified as soon as practicable thereafter.

To the extent the claim is allowed and dividends paid thereon, it will be reduced or perhaps paid in full. If the claim is also filed pursuant to Rule 3005, only one distribution thereon may be made. As expressly required by Rule 3005 and by the purpose of this rule such distribution must diminish the claim.

Committee Note to 1987 Amendments

Under the rule as amended, the debtor or trustee in a chapter 7 or 13 case has 120 days from the first date set for the meeting of creditors to file a claim for the creditor. During the first 90 days of that period the creditor in a chapter 7 or 13 case may file a claim as provided by Rule 3002(c). If the creditor fails to file a claim, the debtor or trustee shall have an additional 30 days thereafter to file the claim. A proof of claim filed by a creditor supersedes a claim filed by the debtor or trustee only if it is timely filed within the 90 days allowed under Rule 3002(c).

Rule 3005

**FILING OF CLAIM, ACCEPTANCE, OR REJECTION
BY GUARANTOR, SURETY, INDORSER,
OR OTHER CODEBTOR**

(a) Filing of Claim. If a creditor has not filed a proof of claim pursuant to Rule 3002 or 3003(c), an entity that is or may be liable with the debtor to that creditor, or who has secured that creditor, may, within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c) whichever is applicable, execute and file a proof of claim in the name of the creditor, if known, or if unknown, in the entity's own name. No distribution shall be made on the claim except on satisfactory proof that the original debt will be diminished by the amount of distribution. A proof of claim filed by a creditor pursuant to Rule 3002 or 3003(c) shall supersede the proof of claim filed pursuant to the first sentence of this subdivision.

(b) Filing of Acceptance or Rejection; Substitution of Creditor. An entity which has filed a claim pursuant to the first sentence of subdivision (a) of this rule may file an acceptance or rejection of a plan in the name of the creditor, if known, or if unknown, in the entity's own name but if the creditor files a proof of claim within the time permitted by Rule 3003(c) or files a notice prior to confirmation of a plan of the creditor's intention to act in the creditor's own behalf, the creditor shall be substituted for the obligor with respect to that claim.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Exception to—

Execution of proof of claim by creditor or agent, see rule 3001.

Filing requirement for unsecured creditor or equity security holder, see rule 3002.

Library References:

C.J.S. Bankruptcy §§ 268 et seq.

West's Key No. Digests, Bankruptcy ⇨2896-2899.

Committee Note

This rule is adapted from former Rules 304 and 10-402. Together with § 501(b) of the Code, the rule makes clear that anyone who may be liable on a debt of the debtor, including a surety, guarantor, indorser, or other codebtor, is authorized to file in the name of the creditor of the debtor.

Subdivision (a). Rule 3002(c) provides the time period for filing proofs of claim in chapter 7 and 13 cases; Rule 3003(c) provides the time, when necessary, for filing claims in a chapter 9 or 11 case.

Subdivision (b). This subdivision applies in chapter 9 and 11 cases as distinguished from chapter 7 cases. It permits voting for or against a plan by an obligor who files a claim in place of the creditor.

Committee Note to 1991 Amendments

The words "with the court" in subdivision (b) are deleted as unnecessary. See Rules 5005(a) and 9001(3).

Rule 3006

**WITHDRAWAL OF CLAIM; EFFECT ON ACCEPTANCE
OR REJECTION OF PLAN**

A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If after a creditor has filed a proof of claim an objection is filed thereto or a complaint is filed against that creditor in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession, and any creditors' committee elected pursuant to § 705(a) or appointed pursuant to § 1102 of the Code. The order of the court shall contain such terms and conditions as the court deems proper. Unless the court orders otherwise, an authorized withdrawal of a claim shall constitute withdrawal of any related acceptance or rejection of a plan.

Amended Apr. 30, 1991, eff. Aug. 1, 1991.

Library References:

C.J.S. Bankruptcy § 278.

West's Key No. Digests, Bankruptcy ⇨2903.

Committee Note

This rule is derived from former Rules 305 and 10-404.

Since 1938 it has generally been held that Rule 41 F.R.Civ.P. governs the withdrawal of a proof of claim. *In re Empire Coal Sales Corp.*, 45 F.Supp. 974, 976 (S.D.N.Y.), *aff'd sub nom. Kleid v. Ruthbell Coal Co.*, 131 F.2d 372, 373 (2d Cir. 1942); *Kelso v. MacLaren*, 122 F.2d 867, 870 (8th Cir. 1941); *In re Hills*, 35 F.Supp. 532, 533 (W.D.Wash.1940). Accordingly the cited cases held that after an objection has been filed a proof of claim may be withdrawn only subject to approval by the court. This constitutes a restriction of the right of withdrawal as recognized by some though by no means all of the cases antedating the promulgation of the Federal Rules of Civil Procedure. See 3 Collier, *Bankruptcy* ¶ 57.12 (14th ed. 1961); Note, 20 Bost.U.L.Rev. 121 (1940).

The filing of a claim does not commence an adversary proceeding but the filing of an objection to the claim initiates a contest that must be disposed of by the court. This rule recognizes the applicability of the considerations underlying Rule 41(a) F.R.Civ.P. to the withdrawal of a claim after it has been put in issue by an objection. Rule 41(a)(2) F.R.Civ.P. requires leave of court to obtain dismissal over the objection of a defendant who has pleaded a counterclaim prior to the service of the plaintiff's motion to dismiss. Although the applicability of this provision to the withdrawal of a claim was assumed in *Conway v. Union Bank of Switzerland*, 204 F.2d 603, 608 (2d Cir. 1953), *Kleid v. Ruthbell Coal Co.*, *supra*, *Kelso v. MacLaren*, *supra*, and *In re Hills*, *supra*, this rule vests discretion in the court to grant, deny, or condition the request of a creditor to withdraw, without regard to whether the trustee has filed a merely defensive objection or a complaint seeking an affirmative recovery of money or property from the creditor.

A number of pre-1938 cases sustained denial of a creditor's request to withdraw proof of claim on the ground of estoppel or election of remedies. 2 Remington, *Bankruptcy* 186 (Henderson ed. 1956); cf. 3 Collier, *supra* ¶ 57.12, at 201 (1964). Voting a claim for a trustee was an important factor in the denial of a request to withdraw in *Standard Varnish Works v. Haydock*, 143 Fed. 318, 319-20 (6th Cir. 1906), and *In re Cann*, 47 F.2d 661, 662 (W.D.Pa. 1931). And it has frequently been recognized that a creditor should not be allowed to withdraw a claim after accepting a dividend. *In re Friedmann*, 1 Am.B.R. 510, 512 (Ref., S.D.N.Y.1899); 3 Collier 205 (1964); cf. *In re O'Gara Coal Co.*, 12 F.2d 426, 429 (7th Cir.), cert. denied, 271 U.S. 683 (1926). It was held in *Industrial Credit Co. v. Hazen*, 222 F.2d 225 (8th Cir. 1955), however, that although a claimant had participated in the first meeting of creditors and in the examination of witnesses, the creditor was entitled under Rule 41(a)(1) F.R.Civ.P. to withdraw the claim as of right by filing a notice of withdrawal before the trustee filed an objection under § 57g of the Act. While this rule incorporates the post-1938 case law referred to in the first paragraph of this note, it rejects the inference drawn in the *Hazen* case that Rule 41(a) F.R.Civ.P. supersedes the pre-1938 case law that vests discretion in the court to deny or restrict withdrawal of a claim by a creditor on the ground of estoppel or election of remedies. While purely formal or technical participation in a case by a creditor who has filed a claim should not deprive the creditor of the right to withdraw the claim, a creditor who has accepted a dividend or who has voted in the election of a trustee or otherwise participated actively in proceedings in a case should be permitted to withdraw only with the approval of the court on terms it deems appropriate after notice to the trustee. 3 Collier 205-06 (1964).

Committee Note to 1991 Amendments

This amendment is stylistic. Notice of the hearing need not be given to committees of equity security holders appointed pursuant to § 1102 or committees of retired employees appointed pursuant to § 1114 of the Code.

Rule 3007

OBJECTIONS TO CLAIMS

An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding.

Amended Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Allowance of claims or interests after objection, see § 502 of this title.

Contested matters, see rule 9014.

Duty of trustee to examine proofs of claims and to object to improper claims—

Individual debt adjustment case, see § 1302 of this title.

Liquidation case, see § 704 of this title.

Reorganization case, see § 1106 of this title.

Objection to claim for purpose of voting for trustee or creditors' committee in liquidation case, see rule 2003.

Library References:

C.J.S. Bankruptcy §§ 280, 282, 283.
West's Key No. Digests, Bankruptcy Ⓒ2922-2924.

Committee Note

This rule is derived from § 47a(8) of the Act and former Bankruptcy Rule 306. It prescribes the manner in which an objection to a claim shall be made and notice of the hearing thereon given to the claimant. The requirement of a writing does not apply to an objection to the allowance of a claim for the purpose of voting for a trustee or creditors' committee in a chapter 7 case. See Rule 2003.

The contested matter initiated by an objection to a claim is governed by Rule 9014, unless a counterclaim by the trustee is joined with the objection to the claim. The filing of a counterclaim ordinarily commences an adversary proceeding subject to the rules in Part VII.

While the debtor's other creditors may make objections to the allowance of a claim, the demands of orderly and expeditious administration have led to a recognition that the right to object is generally exercised by the trustee. Pursuant to § 502(a) of the Code, however, any party in interest may object to a claim. But under § 704 the trustee, if any purpose would be served thereby, has the duty to examine proofs of claim and object to improper claims.

By virtue of the automatic allowance of a claim not objected to, a dividend may be paid on a claim which may thereafter be disallowed on objection made pursuant to this rule. The amount of the dividend paid before the disallowance in such event would be recoverable by the trustee in an adversary proceeding.

Committee Note to 1991 Amendments

The words "with the court" are deleted as unnecessary. See Rules 5005(a) and 9001(3).

Rule 3008**RECONSIDERATION OF CLAIMS**

A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order.

Cross References

Closing and reopening cases, see § 350 of this title.
Exception to procedural rule on new trials and amendment of judgments, see rule 9023.
Motions; form and service, see rule 9013.
Reconsideration of claim prior to closing of case, see § 502 of this title.

Library References:

C.J.S. Bankruptcy § 286.
West's Key No. Digests, Bankruptcy Ⓒ2933.

Committee Note

Section 502(j) of the Code deals only with the reconsideration of allowed claims as did former § 57k of the Act and General Order 21(b). It had

sometimes been held that a referee had no jurisdiction to reconsider a disallowed claim, or the amount or priority of an allowed claim, at the instance of the claimant. See *e.g.*, *In re Gouse*, 7 F.Supp. 106 (M.D.Pa.1934); *In re Tomlinson & Dye, Inc.*, 3 F.Supp. 800 (N.D.Okla.1933). This view disregarded § 2a(2) of the Act and the "ancient and elementary power" of a referee as a court to reconsider orders. *In re Pottasch Brow. Co., Inc.*, 79 F.2d 613, 616 (2d Cir. 1935); *Castaner v. Mora*, 234 F.2d 710 (1st Cir. 1956). This rule recognizes, as did former Bankruptcy Rule 307, the power of the court to reconsider an order of disallowance on appropriate motion.

Reconsideration of a claim that has been previously allowed or disallowed after objection is discretionary with the court. The right to seek reconsideration of an allowed claim, like the right to object to its allowance, is generally exercised by the trustee if one has qualified and is performing the duties of that office with reasonable diligence and fidelity. A request for reconsideration of a disallowance would, on the other hand, ordinarily come from the claimant.

A proof of claim executed and filed in accordance with the rules in this Part III is prima facie evidence of the validity and the amount of the claim notwithstanding a motion for reconsideration of an order of allowance. Failure to respond does not constitute an admission, though it may be deemed a consent to a reconsideration. *In re Goble Boat Co.*, 190 Fed. 92 (N.D.N.Y. 1911). The court may decline to reconsider an order of allowance or disallowance without notice to any adverse party and without affording any hearing to the movant. If a motion to reconsider is granted, notice and hearing must be afforded to parties in interest before the previous action in the claim taken in respect to the claim may be vacated or modified. After reconsideration, the court may allow or disallow the claim, increase or decrease the amount of a prior allowance, accord the claim a priority different from that originally assigned it, or enter any other appropriate order.

The rule expands § 502(j) which provides for reconsideration of an allowance only before the case is closed. Authorities have disagreed as to whether reconsideration may be had after a case has been reopened. Compare 3 Collier, *Bankruptcy* ¶ 57.23[4] (14th ed. 1964), see generally 3 *id.* ¶ 502.10 (15th ed. 1979), with 2 Remington, *Bankruptcy* 498 (Henderson ed. 1956). If a case is reopened as provided in § 350(b) of the Code, reconsideration of the allowance or disallowance of a claim may be sought and granted in accordance with this rule.

Rule 3009

DECLARATION AND PAYMENT OF DIVIDENDS IN A CHAPTER 7 LIQUIDATION CASE

In a chapter 7 case, dividends to creditors shall be paid as promptly as practicable. Dividend checks shall be made payable to and mailed to each creditor whose claim has been allowed, unless a power of attorney authorizing another entity to receive dividends has been executed and filed in accordance with Rule 9010. In that event, dividend checks shall be made payable to the creditor and to the other entity and shall be mailed to the other entity.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Aug. 1, 1993.

Cross References

Dividend records kept by clerk, see rule 5003.

Unclaimed dividends, see § 347 of this title.

Library References:

C.J.S. Bankruptcy §§ 351-353.

West's Key No. Digests, Bankruptcy C=3442.1, 3443.

Committee Note

This rule is derived from former Rules 308 and 11-35(a). The preparation of records showing dividends declared and to whom payable is subject to prescription by the Director of the Administrative Office pursuant to Rule 5003(e). The rule governs distributions to creditors having priority as well as to general unsecured creditors. Notwithstanding the detailed statutory provisions regulating the declaration of dividends, a necessarily wide discretion over this matter has been recognized to reside in the court. See 3A Collier, *Bankruptcy* ¶65.03 (14th ed. 1975); 1 *Proceedings of Seminar for Newly Appointed Referees in Bankruptcy* 173 (1964). Although the rule leaves to the discretion of the court the amount and the times of dividend payments, it recognizes the creditors' right to as prompt payment as practicable.

The second and third sentences of the rule make explicit the method of payment of dividends and afford protection of the interests of the creditor and the holder of a power of attorney authorized to receive payment.

The rule does not permit variance at local option. This represents a marked change from former Bankruptcy Rule 308.

Committee Note to 1993 Amendments

This rule is amended to delete the requirement that the court approve the amounts and times of distributions in chapter 7 cases. This change recognizes the role of the United States trustee in supervising trustees. Other amendments are stylistic and make no substantive change.

Rule 3010

**SMALL DIVIDENDS AND PAYMENTS IN CHAPTER 7
LIQUIDATION, CHAPTER 12 FAMILY FARMER'S DEBT
ADJUSTMENT, AND CHAPTER 13 INDIVIDUAL'S DEBT
ADJUSTMENT CASES**

(a) Chapter 7 Cases. In a chapter 7 case no dividend in an amount less than \$5 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Any dividend not distributed to a creditor shall be treated in the same manner as unclaimed funds as provided in § 347 of the Code.

(b) Chapter 12 and Chapter 13 Cases. In a chapter 12 or chapter 13 case no payment in an amount less than \$15 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Funds not distributed because of this subdivision shall accumulate and shall be paid whenever the accumulation aggregates \$15. Any funds remaining shall be distributed with the final payment.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Library References:

C.J.S. Bankruptcy §§ 351-353, 426, 429, 443 et seq.

West's Key No. Digests, Bankruptcy C=3442.1, 3443, 3685, 3710:1-7), 3712.

Committee Note

This rule permits a court to eliminate the disproportionate expense and inconvenience incurred by the issuance of a dividend check of less than \$5 (or \$15 in a chapter 13 case). Creditors are more irritated than pleased to receive such small dividends, but the money is held subject to their specific request as are unclaimed dividends under § 347(a) of the Code. When the trustee deposits undistributed dividends pursuant to a direction in accordance with this rule the trustee should file with the clerk a list of the names and addresses, so far as known, of the persons entitled to the money so deposited and the respective amounts payable to them pursuant to Rule 3011. In a chapter 13 case, the small dividend will accumulate and will be payable at the latest, with the final dividend. Local rule or order may change the practice permitted in this rule and, in that connection, the order may be incorporated in the order confirming a chapter 13 plan.

Committee Note to 1991 Amendments

Subdivision (b) is amended to include chapter 12 cases.

Rule 3011**UNCLAIMED FUNDS IN CHAPTER 7 LIQUIDATION,
CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT, AND
CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASES**

The trustee shall file a list of all known names and addresses of the entities and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to § 347(a) of the Code.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Treatment of small dividends as unclaimed funds, see rule 3010.

Library References:

C.J.S. Bankruptcy §§ 197, 198, 351, 352, 426, 429, 447.

West's Key No. Digests, Bankruptcy ☞ 3008.1, 3011, 3442.1, 3685, 3712.

Committee Note

This rule is derived from former Bankruptcy Rule 310. The operative provisions of that rule, however, are contained in § 347(a) of the Code, requiring the trustee to stop payment of checks remaining unpaid 90 days after distribution. The rule adds the requirement of filing a list of the names and addresses of the persons entitled to these dividends. This rule applies in a chapter 7 or 13 case but not in a chapter 9 or 11 case. The latter cases are governed by § 347(b) of the Code which provides for unclaimed distributions to be returned to the debtor or other entity acquiring the assets of the debtor.

Committee Note to 1991 Amendments

The title of this rule is amended to include chapter 12 cases. The words "with the clerk" are deleted as unnecessary. See Rules 5005(a) and 9001(3).

Rule 3012

VALUATION OF SECURITY

The court may determine the value of a claim secured by a lien on property in which the estate has an interest on motion of any party in interest and after a hearing on notice to the holder of the secured claim and any other entity as the court may direct.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Definition of—

Lien, see § 101 of this title.

Security, see § 101 of this title.

Security interest, see § 101 of this title.

Determination of secured status, see § 506 of this title.

Motions: form and service, see rule 9013.

Library References:

C.J.S. Bankruptcy §§ 246, 247.

West's Key No. Digests, Bankruptcy ☞2852.

Committee Note

Pursuant to § 506(a) of the Code, secured claims are to be valued and allowed as secured to the extent of the value of the collateral and unsecured, to the extent it is enforceable, for the excess over such value. The valuation of secured claims may become important in different contexts, *e.g.*, to determine the issue of adequate protection under § 361, impairment under § 1124, or treatment of the claim in a plan pursuant to § 1129(b) of the Code. This rule permits the issue to be raised on motion by a party in interest. The secured creditor is entitled to notice of the hearing on the motion and the court may direct that others in the case also receive such notice.

An adversary proceeding is commenced when the validity, priority, or extent of a lien is at issue as prescribed by Rule 7001. That proceeding is relevant to the basis of the lien itself while valuation under Rule 3012 would be for the purposes indicated above.

Rule 3013

CLASSIFICATION OF CLAIMS AND INTERESTS

For the purposes of the plan and its acceptance, the court may, on motion after hearing on notice as the court may direct, determine classes of creditors and equity security holders pursuant to §§ 1122, 1222(b)(1), and 1322(b)(1) of the Code.

Amended Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Motions: form and service, see rule 9013.

Library References:

C.J.S. Bankruptcy §§ 386, 419 et seq.

West's Key No. Digests, Bankruptcy ☞3550, 3682-3683.1, 3707.

Committee Note

Sections 1122 and 1322(b)(1) set the standards for classifying claims and interests but provide that such classification is accomplished in the plan. This rule does not change the standards; rather it recognizes that it may be desirable or necessary to establish proper classification before a plan can be formulated. It provides for a court hearing on such notice as the court may direct.

Committee Note to 1991 Amendments

This rule is amended to include chapter 12 cases.

Rule 3014**ELECTION UNDER § 1111(b) BY SECURED
CREDITOR IN CHAPTER 9 MUNICIPALITY OR
CHAPTER 11 REORGANIZATION CASE**

An election of application of § 1111(b)(2) of the Code by a class of secured creditors in a chapter 9 or 11 case may be made at any time prior to the conclusion of the hearing on the disclosure statement or within such later time as the court may fix. If the disclosure statement is conditionally approved pursuant to Rule 3017.1, and a final hearing on the disclosure statement is not held, the election of application of § 1111(b)(2) may be made not later than the date fixed pursuant to Rule 3017.1(a)(2) or another date the court may fix. The election shall be in writing and signed unless made at the hearing on the disclosure statement. The election, if made by the majorities required by § 1111(b)(1)(A)(i), shall be binding on all members of the class with respect to the plan.

[Amended Apr. 11, 1997, eff. Dec. 1, 1997.]

Cross References

Hearing on disclosure statement, see rule 3017.

Reduction of time for election pursuant to § 1111(b) not permitted, see rule 9006.

Library References:

C.J.S. Bankruptcy §§ 246, 247.

West's Key No. Digests, Bankruptcy ⇨2852.

Committee Note

Pursuant to § 1111(b)(1) of the Code, a nonrecourse secured loan is converted, automatically, into a recourse loan thereby entitling the creditor to an unsecured deficiency claim if the value of the collateral is less than the debt. The class, however, may retain the loan as a nonrecourse loan by electing application of § 1111(b)(2) of the majorities stated in § 1111(b)(1)(A)(i). That section does not specify any time periods for making the election.

Rule 3014 provides that if no agreement is negotiated, the election of § 1111(b)(2) of the Code may be made at any time prior to conclusion of the hearing on the disclosure statement. Once the hearing has been concluded, it would be too late for a secured creditor class to demand different treatment unless the court has fixed a later time. This would be the case if, for example,

a public class of secured creditors should have an approved disclosure statement prior to electing under § 1111(b).

Generally it is important that the proponent of a plan ascertain the position of the secured creditor class before a plan is proposed. The secured creditor class must know the prospects of its treatment under the plan before it can intelligently determine its rights under § 1111(b). The rule recognizes that there may be negotiations between the proponent of the plan and the secured creditor leading to a representation of desired treatment under § 1111(b). If that treatment is approved by the requisite majorities of the class and culminates in a written signed statement filed with the court, that statement becomes binding and the class may not thereafter demand different treatment under § 1111(b) with respect to that plan. The proponent of the plan is thus enabled to seek approval of the disclosure statement and transmit the plan for voting in anticipation of confirmation. Only if that plan is not confirmed may the class of secured creditors thereafter change its prior election.

While this rule and the Code refer to a class of secured creditors it should be noted that ordinarily each secured creditor is in a separate and distinct class. In that event, the secured creditor has the sole power to determine application of § 1111(b) with respect to that claim.

Committee Note to 1997 Amendments

This amendment provides a deadline for electing application of § 1111(b)(2) in a small business case in which a conditionally approved disclosure statement is finally approved without a hearing.

Rule 3015

FILING, OBJECTION TO CONFIRMATION, AND MODIFICATION OF A PLAN IN A CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT OR A CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE

(a) Chapter 12 Plan. The debtor may file a chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within the time prescribed by § 1221 of the Code.

(b) Chapter 13 Plan. The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 15 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 15 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.

(c) Dating. Every proposed plan and any modification thereof shall be dated.

(d) Notice and Copies. The plan or a summary of the plan shall be included with each notice of the hearing on confirmation mailed pursuant to Rule 2002(b). If required by the court, the debtor shall furnish a sufficient number of copies to enable the clerk to include a copy of the plan with the notice of the hearing.

(e) **Transmission to United States Trustee.** The clerk shall forthwith transmit to the United States trustee a copy of the plan and any modification thereof filed pursuant to subdivision (a) or (b) of this rule.

(f) **Objection to Confirmation; Determination of Good Faith in the Absence of an Objection.** An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, before confirmation of the plan. An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

(g) **Modification of Plan After Confirmation.** A request to modify a plan pursuant to § 1229 or § 1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 20 days notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. If required by the court, the proponent shall furnish a sufficient number of copies of the proposed modification, or a summary thereof, to enable the clerk to include a copy with each notice. Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.

Amended Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993.

Cross References

Acceptance or rejection of plans, see rule 3018.

Deposit; confirmation of plan, see rule 3020.

Reduction of time for filing plan not permitted, see rule 9006.

Library References:

C.J.S. Bankruptcy §§ 419, 420, 438.

West's Key No. Digests, Bankruptcy ☞3681, 3704.1.

Committee Note

Section 1321 provides only that the “debtor shall file a plan.” No time periods are specified, nor is any other detail provided. The rule requires a chapter 3 plan to be filed either with the petition or within 10 days thereafter. The court may, for cause, extend the time. The rule permits a summary of the plan to be transmitted with the notice of the hearing on confirmation. The court may, however, require the plan itself to be transmitted and the debtor to supply enough copies for this purpose. In the former rules under Chapter XIII the plan would accompany the notice of the first meeting of creditors. It is more important for the plan or a summary of its terms to be sent with the notice of the confirmation hearing. At that hearing objections to the plan will be heard by the court.

Committee Note to 1991 Amendments

This rule is amended to include chapter 12 plans. Section 1221 of the Code requires the debtor to file a chapter 12 plan not later than 90 days after the order for relief, except that the court may extend the period if an extension is “substantially justified.”

Subdivision (e) enables the United States trustee to monitor chapter 12 and chapter 13 plans pursuant to 28 U.S.C. § 586(a)(3)(C).

Committee Note to 1993 Amendments

Subdivision (b) is amended to provide a time limit for filing a plan after a case has been converted to chapter 13. The substitution of “may” for “shall” is stylistic and makes no substantive change.

Subdivision (d) is amended to clarify that the plan or a summary of the plan must be included with each notice of the confirmation hearing in a chapter 12 case pursuant to Rule 2002(a).

Subdivision (f) is added to expand the scope of the rule to govern objections to confirmation in chapter 12 and chapter 13 cases. The subdivision also is amended to include a provision that permits the court, in the absence of an objection, to determine that the plan has been proposed in good faith and not by any means forbidden by law without the need to receive evidence on these issues. These matters are now governed by Rule 3020.

Subdivision (g) is added to provide a procedure for post-confirmation modification of chapter 12 and chapter 13 plans. These procedures are designed to be similar to the procedures for confirmation of plans. However, if no objection is filed with respect to a proposed modification of a plan after confirmation, the court is not required to hold a hearing. See § 1229(b)(2) and § 1329(b)(2) which provide that the plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved. See § 102(1). The notice of the time fixed for filing objections to the proposed modification should set a date for a hearing to be held in the event that an objection is filed.

Amendments to the title of this rule are stylistic and make no substantive change.

Rule 3016**FILING OF PLAN AND DISCLOSURE STATEMENT IN
CHAPTER 9 MUNICIPALITY AND CHAPTER 11
REORGANIZATION CASES**

(a) Identification of Plan. Every proposed plan and any modification thereof shall be dated and, in a chapter 11 case, identified with the name of the entity or entities submitting or filing it.

(b) Disclosure Statement. In a chapter 9 or 11 case, a disclosure statement under § 1125 or evidence showing compliance with § 1126(b) of the Code shall be filed with the plan or within a time fixed by the court.

*[Text of paragraph (c) effective December 1, 2001,
absent contrary Congressional action.]*

(c) Injunction Under a Plan. If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the plan and disclosure statement

shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and identify the entities that would be subject to the injunction.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 24, 2001, eff. Dec. 1, 2001, absent contrary Congressional action.

Cross References

Filing of municipality debt adjustment plan, see § 941 of this title.

Hearing on disclosure statement, see rule 3017.

Library References:

C.J.S. Bankruptcy §§ 361 et seq.

West's Key No. Digests, Bankruptcy ⇨3481, 3531-3535, 3539.1-3540.

Committee Note

This rule implements the Code provisions concerning the filing of plans in chapters 9 and 11.

Chapter 9 Cases. Section 941 provides that the debtor may file a plan with the petition or thereafter but within a time fixed by the court. A rule, therefore, is unnecessary to specify the time for filing chapter 9 plans.

Chapter 11 Nonrailroad Cases. Section 1121 contains detailed provisions with respect to who may file a chapter 11 plan and, in part, the time period. Section 1121(a) permits a debtor to file a plan with the petition or at any time during the case. Section 1121(b) and (c) grants exclusive periods of 120 days and 180 days for the debtor to file and obtain acceptance of a plan. Failure to take advantage of these periods or the appointment of a trustee would permit other parties in interest to file a plan. These statutory provisions are not repeated in the rules.

Chapter 11 Railroad Cases. Pursuant to subchapter IV of chapter 11, § 1121 of the Code is applicable in railroad cases; see §§ 1161, 103(g). A trustee, however, is to be appointed in every case; thus, pursuant to § 1121(c), any party in interest may file a plan. See discussion of subdivision (a) of this rule, *infra*.

Subdivision (a). Section 1121(c), while permitting parties in interest a limited right to file plans, does not provide any time limitation. This subdivision sets as the deadline, the conclusion of the hearing on the disclosure statement. The court may, however, grant additional time. It is derived from former Chapter X Rule 10-301(c)(2) which used, as the cut-off time, the conclusion of the hearing on approval of a plan. As indicated, *supra*, § 1121(a) permits a debtor to file a plan at any time during the chapter 11 case. Under § 1121(c), parties other than a debtor may file a plan only after a trustee is appointed or the debtor's exclusive time expires.

Subdivision (b) requires plans to be properly identified.

Subdivision (c). This provision is new. In chapter 9 and 11 cases (including railroad reorganization cases) postpetition solicitation of votes on a plan requires transmittal of a disclosure statement, the contents of which have been approved by the court. See § 1125 of the Code. A prepetition solicitation must either have been in conformity with applicable nonbankruptcy law or, if none, the disclosure must have been of adequate information as

set forth in § 1125 of the Code. See § 1126(b). Subdivision (c) of this rule provides the time for filing the disclosure statement or evidence of compliance with § 1126(b) which ordinarily will be with the plan but the court may allow a later time or the court may, pursuant to the last sentence, fix a time certain. Rule 3017 deals with the hearing on the disclosure statement. The disclosure statement, pursuant to § 1125 is to contain adequate information. "Adequate information" is defined in § 1125(a) as information that would permit a reasonable creditor or equity security holder to make an informed judgment on the plan.

Committee Note to 1991 Amendments

Subdivision (a) is amended to enlarge the time for filing competing plans. A party in interest may not file a plan without leave of court only if an order approving a disclosure statement relating to another plan has been entered and a decision on confirmation of the plan has not been entered. This subdivision does not fix a deadline beyond which a debtor may not file a plan.

Committee Note to 1996 Amendments

Section 1121(c) gives a party in interest the right to file a chapter 11 plan after expiration of the period when only the debtor may file a plan. Under § 1121(d), the exclusive period in which only the debtor may file a plan may be extended, but only if a party in interest so requests and the court, after notice and a hearing, finds cause for an extension. Subdivision (a) is abrogated because it could have the effect of extending the debtor's exclusive period for filing a plan without satisfying the requirements of § 1121(d). The abrogation of subdivision (a) does not affect the court's discretion with respect to the scheduling of hearings on the approval of disclosure statements when more than one plan has been filed.

The amendment to subdivision (c), redesignated as subdivision (b), is stylistic.

Committee Note to 2001 Amendments

Subdivision (c) is added to assure that entities whose conduct would be enjoined under a plan, rather than by operation of the Code, are given adequate notice of the proposed injunction. The validity and effect of any injunction are substantive law matters that are beyond the scope of these rules.

Specific and conspicuous language is not necessary if the injunction contained in the plan is substantially the same as an injunction provided under the Code. For example, if a plan contains an injunction against acts to collect a discharged debt from the debtor, Rule 3016(c) would not apply because that conduct would be enjoined nonetheless under § 524(a)(2). But if a plan provides that creditors will be permanently enjoined from asserting claims against persons who are not debtors in the case, the plan and disclosure statement must highlight the injunctive language and comply with the requirements of Rule 3016(c). See § 524(e).

The requirement in this rule that the plan and disclosure statement identify the entities that would be subject to the injunction requires reasonable identification under the circumstances. If the entities that would be subject to the injunction cannot be identified by name, the plan and disclosure statement may describe them by class or category. For example, it may be

sufficient to identify the subjects of the injunction as “all creditors of the debtor.”

CHANGES MADE AFTER PUBLICATION AND COMMENTS

The word “highlighted” in the parenthesis was replaced with “underlined” because highlighted documents are difficult to scan electronically for inclusion in the clerks’ files. The Committee Note was revised to put in a more prominent position the statement that the validity and effect of any injunction provided for in a plan are substantive matters beyond the scope of the rules. Other stylistic changes were made to the Committee Note.

[Text of Rule 3017 heading effective until December 1, 2001, absent contrary Congressional action. See, also, text of revised heading, post.]

Rule 3017

COURT CONSIDERATION OF DISCLOSURE STATEMENT IN CHAPTER 9 MUNICIPALITY AND CHAPTER 11 REORGANIZATION CASES

[Text of Rule 3017 heading effective December 1, 2001, absent contrary Congressional action. See, also, text of former heading, ante.]

Rule 3017

COURT CONSIDERATION OF DISCLOSURE STATEMENT IN A CHAPTER 9 MUNICIPALITY OR CHAPTER 11 REORGANIZATION CASE

(a) Hearing on Disclosure Statement and Objections. Except as provided in Rule 3017.1, after a disclosure statement is filed in accordance with Rule 3016(b), the court shall hold a hearing on at least 25 days’ notice to the debtor, creditors, equity security holders and other parties in interest as provided in Rule 2002 to consider the disclosure statement and any objections or modifications thereto. The plan and the disclosure statement shall be mailed with the notice of the hearing only to the debtor, any trustee or committee appointed under the Code, the Securities and Exchange Commission, and any party in interest who requests in writing a copy of the statement or plan. Objections to the disclosure statement shall be filed and served on the debtor, the trustee, any committee appointed under the Code, and any other entity designated by the court, at any time before the disclosure statement is approved or by an earlier date as the court may fix. In a chapter 11 reorganization case, every notice, plan, disclosure statement, and objection required to be served or mailed pursuant to this subdivision shall be transmitted to the United States trustee within the time provided in this subdivision.

(b) Determination on Disclosure Statement. Following the hearing the court shall determine whether the disclosure statement should be approved.

(c) Dates Fixed for Voting on Plan and Confirmation. On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.

(d) Transmission and Notice to United States Trustee, Creditors, and Equity Security Holders. Upon approval of a disclosure statement,—except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders—the debtor in possession, trustee, proponent of the plan, or clerk as the court orders shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee,

- (1) the plan or a court-approved summary of the plan;
- (2) the disclosure statement approved by the court;
- (3) notice of the time within which acceptances and rejections of the plan may be filed; and
- (4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.

In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan. If the court opinion is not transmitted or only a summary of the plan is transmitted, the court opinion or the plan shall be provided on request of a party in interest at the plan proponent's expense. If the court orders that the disclosure statement and the plan or a summary of the plan shall not be mailed to any unimpaired class, notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and disclosure statement may be obtained upon request and at the plan proponent's expense, shall be mailed to members of the unimpaired class together with the notice of the time fixed for filing objections to and the hearing on confirmation. For the purposes of this subdivision, creditors and equity security holders shall include holders of stock, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.

(e) Transmission to Beneficial Holders of Securities. At the hearing held pursuant to subdivision (a) of this rule, the court shall consider the procedures for transmitting the documents and information required by subdivision (d) of this rule to beneficial holders of stock, bonds, debentures, notes, and other securities, determine the adequacy of the procedures, and enter any orders the court deems appropriate.

*[Text of paragraph (f) effective December 1, 2001,
absent contrary Congressional action.]*

(f) Notice and Transmission of Documents to Entities Subject to an Injunction Under a Plan. If a plan provides for an injunction against conduct not otherwise enjoined under the Code and an entity that would be subject to the injunction is not a creditor or equity security holder, at the hearing held under Rule 3017(a), the court shall consider procedures for providing the entity with:

- (1) at least 25 days' notice of the time fixed for filing objections and the hearing on confirmation of the plan containing the information described in Rule 2002(c)(3); and

(2) to the extent feasible, a copy of the plan and disclosure statement.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 24, 2001, eff. Dec. 1, 2001, absent contrary Congressional action.

Cross References

Acceptance or rejection of plan—

Eligible persons, see rule 3018.

Preference among more than one plan, see rule 3018.

Disclosure statement—

Different statements as between different classes of claims, see § 1125 of this title.

Right to be heard on adequacy of information, see § 1125 of this title.

Solicitation of plan's acceptance, see § 1125 of this title.

Notice of—

Time fixed for plan's acceptance or rejection in accord with this rule, see rule 2002.

Proof of right to record status filed by security holder, see rule 3003.

Library References:

C.J.S. Bankruptcy §§ 361 et seq.

West's Key No. Digests, Bankruptcy ☞3481, 3539.1-3540.

Official Forms

Order and notice for hearing on disclosure statement, see form 12.

Order approving disclosure statement and fixing time for filing acceptances or rejections of plan, combined with notice thereof, see form 13.

Committee Note

This rule is adapted from former Rule 10-303 which dealt with the approval of a Chapter X plan by the court. There is no requirement for plan approval in a chapter 9 or 11 case under the Code but there is the requirement that a disclosure statement containing adequate financial information be approved by the court after notice and a hearing before votes on a plan are solicited. Section 1125(b) of the Code is made applicable in chapter 9 cases by § 901(a). It is also applicable in railroad reorganization cases under subchapter IV of chapter 11; see § 1161 of the Code.

Subdivision (a) of this rule provides for the hearing on the disclosure statement. Thus, a hearing would be required in all cases; whether it may be ex parte would depend on the circumstances of the case, but a mere absence of objections would not eliminate the need for a hearing; see § 102(1) of the Code.

No provision similar to former Rule 10-303(f) is included. That subdivision together with former Rule 10-304 prohibited solicitation of votes until after entry of an order approving the plan. Section 1125(b) of the Code explicitly provides that votes on a plan may not be solicited until a disclosure statement approved by the court is transmitted. Pursuant to the change in rulemaking power, a comparable provision in this rule is unnecessary. 28 U.S.C. § 2075.

Copies of the disclosure statement and plan need not be mailed with the notice of the hearing or otherwise transmitted prior to the hearing except with respect to the parties explicitly set forth in the subdivision.

It should be noted that, by construction, the singular includes the plural. Therefore, the phrase “plan or plans” or “disclosure statement or statements” has not been used although the possibility of multiple plans and statements is recognized.

Subdivision (d) permits the court to require a party other than the clerk of the bankruptcy court to bear the responsibility for transmitting the notices and documents specified in the rule when votes on the plan are solicited. Ordinarily the person responsible for such mailing will be the proponent of the plan. In rare cases the clerk may be directed to mail these documents, particularly when the trustee would have the responsibility but there is insufficient money in the estate to enable the trustee to perform this task.

Committee Note Accompanying 1987 Amendments

Subdivision (d). Section 1125(c) of the Code requires that the entire approved disclosure statement be provided in connection with voting on a plan. The court is authorized by § 1125(c) to approve different disclosure statements for different classes. Although the rule does not permit the mailing of a summary of the disclosure statement in place of the approved disclosure statement, the court may approve a summary of the disclosure statement to be mailed with the complete disclosure statement to those voting on the plan.

Committee Note to 1991 Amendments

This rule is amended to enable the United States trustee to monitor and comment with regard to chapter 11 disclosure statements and plans. The United States trustee does not perform these functions in a chapter 9 municipal debt adjustment case. See 28 U.S.C. § 586(a)(3)(B).

Subdivision (d) is amended to give the court the discretion to direct that one or more unimpaired classes shall not receive disclosure statements, plans, or summaries of plans. Members of unimpaired classes are not entitled to vote on the plan. Although disclosure statements enable members of unimpaired classes to make informed judgments as to whether to object to confirmation because of lack of feasibility or other grounds, in an unusual case the court may direct that disclosure statements shall not be sent to such classes if to do so would not be feasible considering the size of the unimpaired classes and the expense of printing and mailing. In any event, all creditors are entitled to notice of the time fixed for filing objections and notice of the hearing to consider confirmation of the plan pursuant to Rule 2002(b) and the requirement of such notice may not be excused with respect to unimpaired classes. The amendment to subdivision (d) also ensures that the members of unimpaired classes who do not receive such documents will have sufficient information so that they may request these documents in advance of the hearing on confirmation. The amendment to subdivision (d) is not intended to give the court the discretion to dispense with the mailing of the plan and disclosure statement to governmental units holding claims entitled to priority under § 507(a)(7) because they may not be classified. See § 1123(a)(1).

The words “with the court” in subdivision (a) are deleted as unnecessary. See Rules 5005(a) and 9001(3). Reference to the Official Form number in subdivision (d) is deleted in anticipation of future revision and renumbering of the Official Forms.

Subdivision (e) is designed to ensure that appropriate measures are taken for the plan, disclosure statement, ballot and other materials which are required to be transmitted to creditors and equity security holders under this rule to reach the beneficial holders of securities held in nominee name. Such measures may include orders directing the trustee or debtor in possession to reimburse the nominees out of the funds of the estate for the expenses incurred by them in distributing materials to beneficial holders. In most cases, the plan proponent will not know the identities of the beneficial holders and therefore it will be necessary to rely on the nominal holders of the securities to distribute the plan materials to the beneficial owners.

Committee Note to 1997 Amendments

Subdivision (a) is amended to provide that it does not apply to the extent provided in new Rule 3017.1, which applies in small business cases.

Subdivision (d) is amended to provide flexibility in fixing the record date for the purpose of determining the holders of securities who are entitled to receive documents pursuant to this subdivision. For example, if there may be a delay between the oral announcement of the judge's order approving the disclosure statement and entry of the order on the court docket, the court may fix the date on which the judge orally approves the disclosure statement as the record date so that the parties may expedite preparation of the lists necessary to facilitate the distribution of the plan, disclosure statement, ballots, and other related documents.

The court may set a record date pursuant to subdivision (d) only after notice and a hearing as provided in § 102(1) of the Code. Notice of a request for an order fixing the record date may be included in the notice of the hearing to consider approval of the disclosure statement mailed pursuant to Rule 2002(b).

If the court fixes a record date pursuant to subdivision (d) with respect to holders of securities, and the holders are impaired by the plan, the judge also should order that the same record date applies for the purpose of determining eligibility for voting pursuant to Rule 3018(a).

Other amendments are stylistic.

Committee Note to 2001 Amendments

Subdivision (f) is added to assure that entities whose conduct would be enjoined under a plan, rather than by operation of the Code, and who will not receive the documents listed in subdivision (d) because they are neither creditors nor equity security holders, are provided with adequate notice of the proposed injunction. It does not address any substantive law issues relating to the validity or effect of any injunction provided under a plan, or any due process or other constitutional issues relating to notice. These issues are beyond the scope of these rules and are left for judicial determination.

This rule recognizes the need for adequate notice to subjects of an injunction, but that reasonable flexibility under the circumstances may be required. If a known and identifiable entity would be subject to the injunction, and the notice, plan, and disclosure statement could be mailed to that entity, the court should require that they be mailed at the same time that the plan, disclosure statement and related documents are mailed to creditors under Rule 3017(d). If mailing notices and other documents is not feasible because the entities subject to the injunction are described in the plan and disclosure

statement by class or category and they cannot be identified individually by name and address, the court may require that notice under Rule 3017(f)(1) be published.

CHANGES MADE AFTER PUBLICATION AND COMMENTS

No changes were made in the text of the proposed amendments since publication. The Committee Note was revised to put in a more prominent position the statement that the rule does not address related substantive law issues which are beyond the scope of the rules.

Rule 3017.1

COURT CONSIDERATION OF DISCLOSURE STATEMENT IN A SMALL BUSINESS CASE

(a) Conditional Approval of Disclosure Statement. If the debtor is a small business and has made a timely election to be considered a small business in a chapter 11 case, the court may, on application of the plan proponent, conditionally approve a disclosure statement filed in accordance with Rule 3016(b). On or before conditional approval of the disclosure statement, the court shall:

- (1) fix a time within which the holders of claims and interests may accept or reject the plan;
- (2) fix a time for filing objections to the disclosure statement;
- (3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and
- (4) fix a date for the hearing on confirmation.

(b) Application of Rule 3017. Rule 3017(a), (b), (c), and (e) do not apply to a conditionally approved disclosure statement. Rule 3017(d) applies to a conditionally approved disclosure statement, except that conditional approval is considered approval of the disclosure statement for the purpose of applying Rule 3017(d).

(c) Final Approval.

(1) *Notice.* Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement shall be given in accordance with Rule 2002 and may be combined with notice of the hearing on confirmation of the plan.

(2) *Objections.* Objections to the disclosure statement shall be filed, transmitted to the United States trustee, and served on the debtor, the trustee, any committee appointed under the Code and any other entity designated by the court at any time before final approval of the disclosure statement or by an earlier date as the court may fix.

(3) *Hearing.* If a timely objection to the disclosure statement is filed, the court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of the plan.

[Adopted Apr. 11, 1997, eff. Dec. 1, 1997.]

Committee Note

This rule is added to implement § 1125(f) that was added to the Code by the Bankruptcy Reform Act of 1994.

The procedures for electing to be considered a small business are set forth in Rule 1020. If the debtor is a small business and has elected to be considered a small business, § 1125(f) permits the court to conditionally approve a disclosure statement subject to final approval after notice and a hearing. If a disclosure statement is conditionally approved, and no timely objection to the disclosure statement is filed, it is not necessary for the court to hold a hearing on final approval.

Rule 3018

ACCEPTANCE OR REJECTION OF PLAN IN A CHAPTER 9 MUNICIPALITY OR A CHAPTER 11 REORGANIZATION CASE

(a) Entities Entitled to Accept or Reject Plan; Time for Acceptance or Rejection. A plan may be accepted or rejected in accordance with § 1126 of the Code within the time fixed by the court pursuant to Rule 3017. Subject to subdivision (b) of this rule, an equity security holder or creditor whose claim is based on a security of record shall not be entitled to accept or reject a plan unless the equity security holder or creditor is the holder of record of the security on the date the order approving the disclosure statement is entered or on another date fixed by the court, for cause, after notice and a hearing. For cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.

(b) Acceptances or Rejections Obtained Before Petition. An equity security holder or creditor whose claim is based on a security of record who accepted or rejected the plan before the commencement of the case shall not be deemed to have accepted or rejected the plan pursuant to § 1126(b) of the Code unless the equity security holder or creditor was the holder of record of the security on the date specified in the solicitation of such acceptance or rejection for the purposes of such solicitation. A holder of a claim or interest who has accepted or rejected a plan before the commencement of the case under the Code shall not be deemed to have accepted or rejected the plan if the court finds after notice and hearing that the plan was not transmitted to substantially all creditors and equity security holders of the same class, that an unreasonably short time was prescribed for such creditors and equity security holders to accept or reject the plan, or that the solicitation was not in compliance with § 1126(b) of the Code.

(c) Form of Acceptance or Rejection. An acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form. If more than one plan is transmitted pursuant to Rule 3017, an acceptance or rejection may be filed by each creditor or equity security holder for any number of plans transmitted and if acceptances are filed for more than one plan, the creditor or equity security holder may indicate a preference or preferences among the plans so accepted.

(d) Acceptance or Rejection by Partially Secured Creditor. A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim shall be entitled to accept or reject a plan in both capacities.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993; Apr. 11, 1997, eff. Dec. 1, 1997.

Cross References

Acceptance of altered or modified plan, see § 1127 of this title.

Disqualification of votes on acceptance in absence of good faith, see § 1126 of this title.

Filing of plan in—

Individual debt adjustment case, see rule 3015.

Municipality debt adjustment and reorganization cases, with disclosure statement, see rule 3016.

Proof of right to record status filed by security holder, see rule 3003.

Library References:

C.J.S. Bankruptcy §§ 401-405.

West's Key No. Digests, Bankruptcy Ⓒ3541.1-3547.

Committee Note

This rule applies in chapter 9, 11 and 13 cases under the Code. The references in the rule to equity security holders will not, however, be relevant in chapter 9 or 13 cases. The rule will be of little utility in a chapter 13 case because only secured creditors may be requested to vote on a plan; unsecured creditors are not entitled to vote; see § 1325(a)(4), (5) of the Code.

Subdivision (a) is derived from former Rule 10-305(a). It substitutes, in a reorganization case, entry of the order approving the disclosure statement for the order approving a plan in conformity with the differences between Chapter X and chapter 11. In keeping with the underlying theory, it continues to recognize that the lapse time between the filing of the petition and entry of such order will normally be significant and, during that interim, bonds and equity interests can change ownership.

Subdivision (b) recognizes the former Chapter XI practice permitting a plan and acceptances to be filed with the petition, as does § 1126(b) of the Code. However, because a plan under chapter 11 may affect shareholder interests, there should be reference to a record date of ownership. In this instance the appropriate record date is that used in the prepetition solicitation materials because it is those acceptances or rejections which are being submitted to the court.

While § 1126(c), (d), and (e) prohibits use of an acceptance or rejection not procured in good faith, the added provision in subdivision (b) of the rule is somewhat more detailed. It would prohibit use of prepetition acceptances or rejections when some but not all impaired creditors or equity security holders are solicited or when they are not given a reasonable opportunity to submit their acceptances or rejections. This provision together with § 1126(e) gives the court the power to nullify abusive solicitation procedures.

Subdivision (c). It is possible that multiple plans may be before the court for confirmation. Pursuant to § 1129(c) of the Code, the court may confirm only one plan but is required to consider the preferences expressed by those accepting the plans in determining which one to confirm.

Subdivisions (d) and (e) of former Rule 10-305 are not continued since comparable provisions are contained in the statute; see § 1126(c), (d), (e).

It should be noted that while the singular "plan" is used throughout, by construction the plural is included; see § 102(7).

Committee Note to 1991 Amendments

Subdivisions (a) and (b) are amended to delete provisions that duplicate § 1126 of the Code. An entity who is not a record holder of a security, but who claims that it is entitled to be treated as a record holder, may file a statement pursuant to Rule 3003(d).

Subdivision (a) is amended further to allow the court to permit a creditor or equity security holder to change or withdraw an acceptance or rejection for cause shown whether or not the time fixed for voting has expired.

Subdivision (b) is also amended to give effect to a prepetition acceptance or rejection if solicitation requirements were satisfied with respect to substantially all members of the same class, instead of requiring proper solicitation with respect to substantially all members of all classes.

Subdivision (c) is amended to delete the Official Form number in anticipation of future revision and renumbering of the Official Forms.

Committee Note to 1993 Amendments

The title of this rule is amended to indicate that it applies only in a chapter 9 or a chapter 11 case. The amendment of the word “Plans” to “Plan” is stylistic.

Committee Note to 1997 Amendments

Subdivision (a) is amended to provide flexibility in fixing the record date for the purpose of determining the holders of securities who are entitled to vote on the plan. For example, if there may be a delay between the oral announcement of the judge’s decision approving the disclosure statement and entry of the order on the court docket, the court may fix the date on which the judge orally approves the disclosure statement as the record date for voting purposes so that the parties may expedite preparation of the lists necessary to facilitate the distribution of the plan, disclosure statement, ballots, and other related documents in connection with the solicitation of votes.

The court may set a record date pursuant to subdivision (a) only after notice and a hearing as provided in § 102(1) of the Code. Notice of a request for an order fixing the record date may be included in the notice of the hearing to consider approval of the disclosure statement mailed pursuant to Rule 2002(b).

If the court fixes the record date for voting purposes, the judge also should order that the same record date shall apply for the purpose of distributing the documents required to be distributed pursuant to Rule 3017(d).

Rule 3019**MODIFICATION OF ACCEPTED PLAN BEFORE
CONFIRMATION IN A CHAPTER 9 MUNICIPALITY
OR A CHAPTER 11 REORGANIZATION CASE**

In a chapter 9 or chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the

Code and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Aug. 1, 1993.

Cross References

Acceptance or rejection of plans, see rule 3018.

Modification of plan in—

Individual debt adjustment case, see § 1323 of this title.

Municipality debt adjustment case, see § 942 of this title.

Reorganization case, see § 1127 of this title.

Library References:

C.J.S. Bankruptcy §§ 410, 411.

West's Key No. Digests, Bankruptcy Ⓒ3569.

Committee Note

This rule implements §§ 942, 1127 and 1323 of the Code. For example, § 1127 provides for modification before and after confirmation but does not deal with the minor modifications that do not adversely change any rights. The rule makes clear that a modification may be made, after acceptance of the plan without submission to creditors and equity security holders if their interests are not affected. To come within this rule, the modification should be one that does not change the rights of a creditor or equity security holder as fixed in the plan before modification.

Committee Note to 1993 Amendments

This rule is amended to limit its application to chapter 9 and chapter 11 cases. Modification of plans after confirmation in chapter 12 and chapter 13 cases is governed by Rule 3015. The addition of the comma in the second sentence is stylistic and makes no substantive change.

Rule 3020

DEPOSIT; CONFIRMATION OF PLAN IN A CHAPTER 9 MUNICIPALITY OR A CHAPTER 11 REORGANIZATION CASE

(a) Deposit. In a chapter 11 case, prior to entry of the order confirming the plan, the court may order the deposit with the trustee or debtor in possession of the consideration required by the plan to be distributed on confirmation. Any money deposited shall be kept in a special account established for the exclusive purpose of making the distribution.

(b) Objection to and Hearing on Confirmation in a Chapter 9 or Chapter 11 Case.

(1) Objection. An objection to confirmation of the plan shall be filed and served on the debtor, the trustee, the proponent of the plan, any committee appointed under the Code, and any other entity designated by the court, within a time fixed by the court. Unless the case is a chapter 9 municipality case, a copy of

every objection to confirmation shall be transmitted by the objecting party to the United States trustee within the time fixed for filing objections. An objection to confirmation is governed by Rule 9014.

(2) *Hearing.* The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

[Text of paragraph (c) effective until December 1, 2001, absent contrary Congressional action. See, also, revised text, post.]

(c) Order of Confirmation. The order of confirmation shall conform to the appropriate Official Form and notice of entry thereof shall be mailed promptly as provided in Rule 2002(f) to the debtor, the trustee, creditors, equity security holders, and other parties in interest. Except in a chapter 9 municipality case, notice of entry of the order of confirmation shall be transmitted to the United States trustee as provided in Rule 2002(k).

[Text of paragraph (c) effective December 1, 2001, absent contrary Congressional action. See, also, former text, ante.]

(c) Order of confirmation.

(1) The order of confirmation shall conform to the appropriate Official Form. If the plan provides for an injunction against conduct not otherwise enjoined under the Code, the order of confirmation shall (1) describe in reasonable detail all acts enjoined; (2) be specific in its terms regarding the injunction; and (3) identify the entities subject to the injunction.

(2) Notice of entry of the order of confirmation shall be mailed promptly to the debtor, the trustee, creditors, equity security holders, other parties in interest, and, if known, to any identified entity subject to an injunction provided for in the plan against conduct not otherwise enjoined under the Code.

(3) Except in a chapter 9 municipality case, notice of entry of the order of confirmation shall be transmitted to the United States trustee as provided in Rule 2002(k).

(d) Retained Power. Notwithstanding the entry of the order of confirmation, the court may issue any other order necessary to administer the estate.

(e) Stay of Confirmation Order. An order confirming a plan is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993; Apr. 29, 1999, eff. Dec. 1, 1999; Apr. 24, 2001, eff. Dec. 1, 2001.

Cross References

Modification of accepted plan before confirmation, see rule 3019.

Library References:

C.J.S. Bankruptcy §§ 203, 406-411.

West's Key No. Digests, Bankruptcy Ⓒ3039, 3566.1-3570.

Official Forms

Order approving disclosure statement and fixing time for filing acceptances or rejections of plan, combined with notice thereof, see form 13.

Committee Note

This rule is adapted from former Rules 10-307, 11-38, and 13-213. It applies to cases filed under chapters 9, 11 and 13. Certain subdivisions of the earlier rules have not been included, such as, a subdivision vesting title in the debtor because § 541 of the Code does not transfer title out of the debtor as did § 70a of the Bankruptcy Act; see also §§ 1141(b), 1327(b). Subdivision (b) of former Rule 13-213 is not included because its provisions are contained in the statute; see §§ 1322, 1325(b), 105.

Subdivision (a) gives discretion to the court to require in chapter 11 cases the deposit of any consideration to be distributed on confirmation. If money is to be distributed, it is to be deposited in a special account to assure that it will not be used for any other purpose. The Code is silent in chapter 11 with respect to the need to make a deposit or the person with whom any deposit is to be made. Consequently, there is no statutory authority for any person to act in a capacity similar to the disbursing agent under former Chapter XI practice. This rule provides that only the debtor in possession or trustee should be appointed as the recipient of the deposit. Any consideration other than money, *e.g.*, notes or stock may be given directly to the debtor in possession or trustee and need not be left in any kind of special account. In chapter 9 cases, § 944(b) provides for deposit with a disbursing agent appointed by the court of any consideration to be distributed under the plan.

Subdivision (d) clarifies the authority of the court to conclude matters pending before it prior to confirmation and to continue to administer the estate as necessary, *e.g.*, resolving objections to claims.

Committee Note to 1991 Amendments

The United States trustee monitors chapter 11, chapter 12, and chapter 13 plans and has standing to be heard regarding confirmation of a plan. See 28 U.S.C. § 586(a)(3). The amendments to subdivisions (b)(1) and (c) of this rule facilitate that role of the United States trustee. Subdivision (b)(1) is also amended to require service on the proponent of the plan of objections to confirmation. The words “with the court” in subdivision (b)(1) are deleted as unnecessary. See Rules 5005(a) and 9001(3).

In a chapter 12 case, the court is required to conduct and conclude the hearing on confirmation of the plan within the time prescribed in § 1224 of the Code.

Subdivision (c) is also amended to require that the confirmation order be mailed to the trustee. Reference to the Official Form number is deleted in anticipation of future revision and renumbering of the Official Forms.

Committee Note to 1993 Amendments

This rule is amended to limit its application to chapter 9 and chapter 11 cases. The procedures relating to confirmation of plans in chapter 12 and chapter 13 cases are provided in Rule 3015. Other amendments are stylistic and make no substantive change.

Committee Note to 1999 Amendments

Subdivision (e) is added to provide sufficient time for a party to request a stay pending appeal of an order confirming a plan under chapter 9 or chapter 11 of the Code before the plan is implemented and an appeal becomes moot. Unless the court orders otherwise, any transfer of assets, issuance of securities, and cash distributions provided for in the plan may not be made before the expiration of the 10-day period. The stay of the confirmation order under subdivision (e) does not affect the time for filing a notice of appeal from the confirmation order in accordance with Rule 8002.

The court may, in its discretion, order that Rule 3020(e) is not applicable so that the plan may be implemented and distributions may be made immediately. Alternatively, the court may order that the stay under Rule 3020(e) is for a fixed period less than 10 days.

Committee Notes to 2001 Amendments

Subdivision (c) is amended to provide notice to an entity subject to an injunction provided for in a plan against conduct not otherwise enjoined by operation of the Code. This requirement is not applicable to an injunction contained in a plan if it is substantially the same as an injunction provided under the Code. The validity and effect of any injunction provided for in a plan are substantive law matters that are beyond the scope of these rules.

The requirement that the order of confirmation identify the entities subject to the injunction requires only reasonable identification under the circumstances. If the entities that would be subject to the injunction cannot be identified by name, the order may describe them by class or category if reasonable under the circumstances. For example, it may be sufficient to identify the entities as "all creditors of the debtor."

CHANGES MADE AFTER PUBLICATION AND COMMENTS

No changes were made in the text of the proposed amendments. The Committee Note was revised to put in a more prominent position the statement that the validity and effect of injunctions provided for in plans is beyond the scope of the rules.

Rule 3021**DISTRIBUTION UNDER PLAN**

Except as provided in Rule 3020(e), after a plan is confirmed, distribution shall be made to creditors whose claims have been allowed, to interest holders whose interests have not been disallowed, and to indenture trustees who have filed claims under Rule 3003(c)(5) that have been allowed. For purposes of this rule, creditors include holders of bonds, debentures, notes, and other debt securities, and interest holders include the holders of stock and other equity securities, of record at the time of commencement of distribution, unless a different time is fixed by the plan or the order confirming the plan.

Amended Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 29, 1999, eff. Dec. 1, 1999.

Cross References

Disposition of unclaimed property, see § 347 of this title.

Power of court to require transfers of property, see § 1142 of this title.

Proof of right to record status filed by security holder, see rule 3003.

Time for surrender of security or performance of required act under reorganization plan, see § 1143 of this title.

Library References:

C.J.S. Bankruptcy § 409.
West's Key No. Digests, Bankruptcy Ⓒ3570.

Committee Note

This rule is derived from former Chapter X Rule 10-405(a). Subdivision (b) of that rule is covered by § 1143 of the Code.

Committee Note to 1997 Amendments

This rule is amended to provide flexibility in fixing the record date for the purpose of making distributions to holders of securities of record. In a large case, it may be impractical for the debtor to determine the holders of record with respect to publicly held securities and also to make distributions to those holders at the same time. Under this amendment, the plan or the order confirming the plan may fix a record date for distributions that is earlier than the date on which distributions commence.

This rule also is amended to treat holders of bonds, debentures, notes, and other debt securities the same as any other creditors by providing that they shall receive a distribution only if their claims have been allowed. Finally, the amendments clarify that distributions are to be made to all interest holders—not only those that are within the definition of “equity security holders” under § 101 of the Code—whose interests have not been disallowed.

Committee Note to 1999 Amendments

This amendment is to conform to the amendments to Rule 3020 regarding the ten-day stay of an order confirming a plan in a chapter 9 or chapter 11 case. The other amendments are stylistic.

Rule 3022**FINAL DECREE IN CHAPTER 11 REORGANIZATION CASE**

After an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Close of case after trustee's discharge, see § 350 of this title.
Surrender of security or performance of required act under reorganization plan, denial of distribution, see § 1143 of this title.

Library References:

C.J.S. Bankruptcy § 409.
West's Key No. Digests, Bankruptcy Ⓒ3570.

Committee Note

Section 350 of the Code requires the court to close the case after the estate is fully administered and the trustee has been discharged. Section 1143 places a five year limitation on the surrender of securities when required

for participation under a plan but this provision should not delay entry of the final decree.

Committee Note to 1991 Amendments

Entry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed. Factors that the court should consider in determining whether the estate has been fully administered include (1) whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

The court should not keep the case open only because of the possibility that the court's jurisdiction may be invoked in the future. A final decree closing the case after the estate is fully administered does not deprive the court of jurisdiction to enforce or interpret its own orders and does not prevent the court from reopening the case for cause pursuant to § 350(b) of the Code. For example, on motion of a party in interest, the court may reopen the case to revoke an order of confirmation procured by fraud under § 1144 of the Code. If the plan or confirmation order provides that the case shall remain open until a certain date or event because of the likelihood that the court's jurisdiction may be required for specific purposes prior thereto, the case should remain open until that date or event.

PART IV

THE DEBTOR: DUTIES AND BENEFITS

Rule

- 4001. Relief From Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements
- 4002. Duties of Debtor
- 4003. Exemptions
- 4004. Grant or Denial of Discharge
- 4005. Burden of Proof in Objecting to Discharge
- 4006. Notice of No Discharge
- 4007. Determination of Dischargeability of a Debt
- 4008. Discharge and Reaffirmation Hearing

Rule 4001

RELIEF FROM AUTOMATIC STAY; PROHIBITING OR CONDITIONING THE USE, SALE, OR LEASE OF PROPERTY; USE OF CASH COLLATERAL; OBTAINING CREDIT; AGREEMENTS

(a) Relief From Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property.

(1) *Motion.* A motion for relief from an automatic stay provided by the Code or a motion to prohibit or condition the use, sale, or lease of property pursuant to § 363(e) shall be made in accordance with Rule 9014 and shall be served on any committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to § 1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct.

(2) *Ex Parte Relief.* Relief from a stay under § 362(a) or a request to prohibit or condition the use, sale, or lease of property pursuant to § 363(e) may be granted without prior notice only if (A) it clearly appears from specific facts shown by affidavit or by a verified motion that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party or the attorney for the adverse party can be heard in opposition, and (B) the movant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons why notice should not be required. The party obtaining relief under this subdivision and § 362(f) or § 363(e) shall immediately give oral notice thereof to the trustee or debtor in possession and to the debtor and forthwith mail or otherwise transmit to such adverse party or parties a copy of the order granting relief. On two days notice to the party who obtained relief from the stay without notice or on shorter notice to that party as the court may prescribe, the adverse party may appear and move reinstatement of the stay or reconsideration of the order prohibiting or conditioning the use, sale, or lease of

property. In that event, the court shall proceed expeditiously to hear and determine the motion.

(3) *Stay of Order.* An order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise.

(b) Use of Cash Collateral.

(1) *Motion; Service.* A motion for authorization to use cash collateral shall be made in accordance with Rule 9014 and shall be served on any entity which has an interest in the cash collateral, on any committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to § 1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct.

(2) *Hearing.* The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 15 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 15 day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

(3) *Notice.* Notice of hearing pursuant to this subdivision shall be given to the parties on whom service of the motion is required by paragraph (1) of this subdivision and to such other entities as the court may direct.

(c) Obtaining Credit.

(1) *Motion; Service.* A motion for authority to obtain credit shall be made in accordance with Rule 9014 and shall be served on any committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to § 1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct. The motion shall be accompanied by a copy of the agreement.

(2) *Hearing.* The court may commence a final hearing on a motion for authority to obtain credit no earlier than 15 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 15 day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

(3) *Notice.* Notice of hearing pursuant to this subdivision shall be given to the parties on whom service of the motion is required by paragraph (1) of this subdivision and to such other entities as the court may direct.

(d) Agreement Relating to Relief From the Automatic Stay, Prohibiting or Conditioning the Use, Sale, or Lease of Property, Providing Adequate Protection, Use of Cash Collateral, and Obtaining Credit.

(1) *Motion; Service.* A motion for approval of an agreement (A) to provide adequate protection, (B) to prohibit or condition the use, sale, or lease of property, (C) to modify or terminate the stay provided for in § 362, (D) to use cash

collateral, or (E) between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property shall be served on any committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to § 1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct. The motion shall be accompanied by a copy of the agreement.

(2) *Objection.* Notice of the motion and the time within which objections may be filed and served on the debtor in possession or trustee shall be mailed to the parties on whom service is required by paragraph (1) of this subdivision and to such other entities as the court may direct. Unless the court fixes a different time, objections may be filed within 15 days of the mailing of notice.

(3) *Disposition; Hearing.* If no objection is filed, the court may enter an order approving or disapproving the agreement without conducting a hearing. If an objection is filed or if the court determines a hearing is appropriate, the court shall hold a hearing on no less than five days' notice to the objector, the movant, the parties on whom service is required by paragraph (1) of this subdivision and such other entities as the court may direct.

(4) *Agreement in Settlement of Motion.* The court may direct that the procedures prescribed in paragraphs (1), (2), and (3) of this subdivision shall not apply and the agreement may be approved without further notice if the court determines that a motion made pursuant to subdivisions (a), (b), or (c) of this rule was sufficient to afford reasonable notice of the material provisions of the agreement and opportunity for a hearing.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 29, 1999, eff. Dec. 1, 1999.

Cross References

Enlargement of thirty-day period after which stay will expire following commencement of final hearing not permitted, see rule 9006.

Extension of time for trustee to redeem debtor's property, see § 108 of this title.

Methods for providing adequate protection, see § 361 of this title.

Motions—

For relief from stay filed with court in which case is pending, see rule 5005.

Form and service, see rule 9013.

Signing and verification of papers, see rule 9011.

Stay of actions on claims against—

Codebtor in individual debt adjustment case, see § 1301 of this title.

Debtor in railroad reorganization case, see § 922 of this title.

Library References:

C.J.S. Bankruptcy §§ 80 et seq., 184 et seq., 200–202.

West's Key No. Digests, Bankruptcy ☞2421–2443, 3035.1–3038, 3061–3088.

Committee Note

This rule implements § 362 of the Code which sets forth provisions regarding the automatic stay that arises on the filing of a petition. That section and this rule are applicable in chapter 7, 9, 11 and 13 cases. It also implements § 363(c)(2) concerning use of cash collateral.

Subdivision (a) transforms with respect to the automatic stay what was an adversary proceeding under the former rules to motion practice. The Code provides automatic stays in several sections, *e.g.*, §§ 362(a), 1301(a), and in § 362(d) provides some grounds for relief from the stay. This rule specifies that the pleading seeking relief is by means of a motion. Thus the time period in Rule 7012 to answer a complaint would not be applicable and shorter periods may be fixed. Section 362(e) requires the preliminary hearing to be concluded within 30 days of its inception, rendering ordinary complaint and answer practice inappropriate.

This subdivision also makes clear that a motion under Rule 9014 is the proper procedure for a debtor to seek court permission to use cash collateral. See § 363(c)(2). Pursuant to Rule 5005, the motion should be filed in the court in which the case is pending. The court or local rule may specify the persons to be served with the motion for relief from the stay; see Rule 9013.

Subdivision (b) of the rule fills a procedural void left by § 362. Pursuant to § 362(e), the automatic stay is terminated 30 days after a motion for relief is made unless the court continues the stay as a result of a final hearing or, pending final hearing, after a preliminary hearing. If a preliminary hearing is held, § 362(e) requires the final hearing to be commenced within 30 days after the preliminary hearing. Although the expressed legislative intent is to require expeditious resolution of a secured party's motion for relief, § 362 is silent as to the time within which the final hearing must be concluded. Subdivision (b) imposes a 30 day deadline on the court to resolve the dispute.

At the final hearing, the stay is to be terminated, modified, annulled, or conditioned for cause, which includes, *inter alia*, lack of adequate protection; § 362(d). The burden of proving adequate protection is on the party opposing relief from the stay; § 362(g)(2). Adequate protection is exemplified in § 361.

Subdivision (c) implements § 362(f) which permits *ex parte* relief from the stay when there will be irreparable damage. This subdivision sets forth the procedure to be followed when relief is sought under § 362(f). It is derived from former Bankruptcy Rule 601(d).

Committee Note to 1987 Amendments

The scope of this rule is expanded and the former subdivisions (a), (b) and (c) are now combined in subdivision (a). The new subdivision (a)(2) is amended to conform to the 1984 amendments to § 362(e) of the Code.

Subdivision (b) deals explicitly with the procedures which follow after a motion to use cash collateral is made and served. Filing shall be pursuant to Rule 5005. Service of the motion may be made by any method authorized by Rule 7004 and, if service is by mail, service is complete on mailing. Rule 9006(e). Under subdivision (b)(2), the court may commence a final hearing on the motion within 15 days of service. Rule 9006(f) does not extend this 15 day period when service of the motion is by mail because the party served is not required to act within the 15 day period. In addition to service of the motion, notice of the hearing must be given. Rule 9007 authorizes the court to direct the form and manner of giving notice that is appropriate to the circumstances.

Section 363(c)(3) authorizes the court to conduct a preliminary hearing and to authorize the use of cash collateral "if there is a reasonable likelihood that the trustee will prevail at a final hearing." Subdivision (b)(2) of the rule

permits a preliminary hearing to be held earlier than 15 days after service. Any order authorizing the use of cash collateral shall be limited to the amount necessary to protect the estate until a final hearing is held.

The objective of subdivision (b) is to accommodate both the immediate need of the debtor and the interest of the secured creditor in the cash collateral. The time for holding the final hearing may be enlarged beyond the 15 days prescribed when required by the circumstances.

The motion for authority to use cash collateral shall include (1) the amount of cash collateral sought to be used; (2) the name and address of each entity having an interest in the cash collateral; (3) the name and address of the entity in control or having possession of the cash collateral; (4) the facts demonstrating the need to use the cash collateral; and (5) the nature of the protection to be provided those having an interest in the cash collateral. If a preliminary hearing is requested, the motion shall also include the amount of cash collateral sought to be used pending final hearing and the protection to be provided.

Notice of the preliminary and final hearings may be combined. This rule does not limit the authority of the court under § 363(c)(2)(B) and § 102(1).

Subdivision (c) is new. The service, hearing, and notice requirements are similar to those imposed by subdivision (b). The motion to obtain credit shall include the amount and type of the credit to be extended, the name and address of the lender, the terms of the agreement, the need to obtain the credit, and the efforts made to obtain credit from other sources. If the motion is to obtain credit pursuant to § 364(c) or (d), the motion shall describe the collateral, if any, and the protection for any existing interest in the collateral which may be affected by the proposed agreement.

Subdivision (d) is new. In the event the 15 day period for filing objections to the approval of an agreement of the parties described in this subdivision is too long, the parties either may move for a reduction of the period under Rule 9006(c)(1) or proceed under subdivision (b) or (c), if applicable. Rule 9006(c)(1) requires that cause be shown for the reduction of the period in which to object. In applying this criterion the court may consider the option of proceeding under subdivision (b) or (c) and grant a preliminary hearing and relief pending final hearing.

Committee Note to 1991 Amendments

Subdivision (a) is expanded to include a request to prohibit or condition the use, sale, or lease of property as is necessary to provide adequate protection of a property interest pursuant to § 363(e) of the Code.

Notice of the motion for relief from the automatic stay or to prohibit or condition the use, sale, or lease of property must be served on the entities entitled to receive notice of a motion to approve an agreement pursuant to subdivision (d). If the movant and the adverse party agree to settle the motion and the terms of the agreement do not materially differ from the terms set forth in the movant's motion papers, the court may approve the agreement without further notice pursuant to subdivision (d)(4).

Subdivision (a)(2) is deleted as unnecessary because of § 362(e) of the Code.

Subdivisions (b)(1), (c)(1), and (d)(1) are amended to require service on committees that are elected in chapter 7 cases. Service on committees of

retired employees appointed under § 1114 of the Code is not required. These subdivisions are amended further to clarify that, in the absence of a creditors' committee, service on the creditors included on the list filed pursuant to Rule 1007(d) is required only in chapter 9 and chapter 11 cases. The other amendments to subdivision (d)(1) are for consistency of style and are not substantive.

Subdivision (d)(4) is added to avoid the necessity of further notice and delay for the approval of an agreement in settlement of a motion for relief from an automatic stay, to prohibit or condition the use, sale, or lease of property, for use of cash collateral, or for authority to obtain credit if the entities entitled to notice have already received sufficient notice of the scope of the proposed agreement in the motion papers and have had an opportunity to be heard. For example, if a trustee makes a motion to use cash collateral and proposes in the original motion papers to provide adequate protection of the interest of the secured party by granting a lien on certain equipment, and the secured creditor subsequently agrees to terms that are within the scope of those proposed in the motion, the court may enter an order approving the agreement without further notice if the entities that received the original motion papers have had a reasonable opportunity to object to the granting of the motion to use cash collateral.

If the motion papers served under subdivision (a), (b), or (c) do not afford notice sufficient to inform the recipients of the material provisions of the proposed agreement and opportunity for a hearing, approval of the settlement agreement may not be obtained unless the procedural requirements of subdivision (d)(1), (d)(2), and (d)(3) are satisfied. If the 15 day period for filing objections to the approval of the settlement agreement is too long under the particular circumstances of the case, the court may shorten the time for cause under Rule 9006(c)(1).

Committee Note to 1999 Amendments

Paragraph (a)(3) is added to provide sufficient time for a party to request a stay pending appeal of an order granting relief from an automatic stay before the order is enforced or implemented. The stay under paragraph (a)(3) is not applicable to orders granted ex parte in accordance with Rule 4001(a)(2).

The stay of the order does not affect the time for filing a notice of appeal in accordance with Rule 8002. While the enforcement and implementation of an order granting relief from the automatic stay is temporarily stayed under paragraph (a)(3), the automatic stay continues to protect the debtor, and the moving party may not foreclose on collateral or take any other steps that would violate the automatic stay.

The court may, in its discretion, order that Rule 4001(a)(3) is not applicable so that the prevailing party may immediately enforce and implement the order granting relief from the automatic stay. Alternatively, the court may order that the stay under Rule 4001(a)(3) is for a fixed period less than 10 days.

Rule 4002

DUTIES OF DEBTOR

In addition to performing other duties prescribed by the Code and rules, the debtor shall (1) attend and submit to an examination at the times ordered by the court; (2) attend the hearing on a complaint objecting to discharge and testify, if called as a witness; (3) inform the trustee immediately in writing as to the location of real property in which the debtor has an interest and the name and address of every person holding money or property subject to the debtor's withdrawal or order if a schedule of property has not yet been filed pursuant to Rule 1007; (4) cooperate with the trustee in the preparation of an inventory, the examination of proofs of claim, and the administration of the estate, and (5) file a statement of any change of the debtor's address.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Debtor's duties to--

Appear at meeting of creditors, see § 343 of this title.

File list of creditors and assets, cooperate with trustee, and appear at discharge hearing, see § 521 of this title.

File lists, schedules, and statements, see rule 1007.

Keep records, make reports, and give notice, see rule 2015.

Immunity from self-incrimination, see § 344 of this title.

Library References:

C.J.S. Bankruptcy §§ 191, 374.

West's Key No. Digests. Bankruptcy ⇨3022, 3622.

Committee Note

This rule should be read together with §§ 343 and 521 of the Code and Rule 1007, all of which impose duties on the debtor. Clause (3) of this rule implements the provisions of Rule 2015(a).

Committee Note to 1987 Amendments

New clause (5) of the rule imposes on the debtor the duty to advise the clerk of any change of the debtor's address.

Rule 4003

EXEMPTIONS

(a) Claim of Exemptions. A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

(b) Objecting to a Claim of Exemptions. A party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The

court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension. Copies of the objections shall be delivered or mailed to the trustee, the person filing the list, and the attorney for that person.

(c) Burden of Proof. In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

(d) Avoidance by Debtor of Transfers of Exempt Property. A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion in accordance with Rule 9014.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 17, 2000, eff. Dec. 1, 2000.

Cross References

Automatic preservation of avoided property transfers for benefit of estate, see § 551 of this title.

Enlargement of thirty-day period for filing objections to property claimed as exempt permitted as limited in this rule, see rule 9006.

Motions; form and service, see rule 9013.

Proceedings to avoid transfers of exempt property as nonadversarial proceedings, see rule 7001.

Reduction of time to claim property as exempt by dependent not permitted, see rule 9006.

Right of debtor's redemption of personal property from lien securing dischargeable consumer debt. see § 722 of this title.

Library References:

C.J.S. Bankruptcy §§ 44, 110 et seq., 162 et seq.

West's Key No. Digests, Bankruptcy ☞2321-2325, 2761-2802.

Official Forms

Schedules of assets and liabilities, see form 6.

Committee Note

This rule is derived from § 522(1) of the Code and, in part, former Bankruptcy Rule 403. The Code changes the thrust of that rule by making it the burden of the debtor to list his exemptions and the burden of parties in interest to raise objections in the absence of which "the property claimed as exempt on such list is exempt;". § 522(1).

Subdivision (a). While § 522(1) refers to a list of property claimed as exempt, the rule incorporates such a list as part of Official Form No. 6, the schedule of the debtor's assets, rather than requiring a separate list and filing. Rule 1007, to which subdivision (a) refers, requires that schedule to be filed within 15 days after the order for relief, unless the court extends the time.

Section 522(1) also provides that a dependent of the debtor may file the list if the debtor fails to do so. Subdivision (a) of the rule allows such filing from the expiration of the debtor's time until 30 days thereafter. Dependent is defined in § 522(a)(1).

Subdivision (d) provides that a proceeding by the debtor, permitted by § 522(f) of the Code, is a contested matter rather than the more formal adversary proceeding. Proceedings within the scope of this subdivision are

distinguished from proceedings brought by the trustee to avoid transfers. The latter are classified as adversary proceedings by Rule 7001.

Committee Note to 1991 Amendments

Subdivision (b) is amended to facilitate the filing of objections to exemptions claimed on a supplemental schedule filed under Rule 1007(h).

Committee Note to 2000 Amendments

This rule is amended to permit the court to grant a timely request for an extension of time to file objections to the list of claimed exemptions, whether the court rules on the request before or after the expiration of the 30-day period. The purpose of this amendment is to avoid the harshness of the present rule which has been construed to deprive a bankruptcy court of jurisdiction to grant a timely request for an extension if it has failed to rule on the request within the 30-day period. See *In re Laurain*, 113 F.3d 595 (6th Cir.1997); *Matter of Stoulig*, 45 F.3d 957 (5th Cir.1995); *In re Brayshaw*, 912 F.2d 1255 (10th Cir.1990). The amendments clarify that the extension may be granted only for cause. The amendments also conform the rule to § 522(l) of the Code by recognizing that any party in interest may file an objection or request for an extension of time under this rule. Other amendments are stylistic.

Rule 4004

GRANT OR DENIAL OF DISCHARGE

(a) Time for Filing Complaint Objecting to Discharge; Notice of Time Fixed. In a chapter 7 liquidation case a complaint objecting to the debtor's discharge under § 727(a) of the Code shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). In a chapter 11 reorganization case, the complaint shall be filed no later than the first date set for the hearing on confirmation. At least 25 days' notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k), and to the trustee and the trustee's attorney.

(b) Extension of Time. On motion of any party in interest, after hearing on notice, the court may for cause extend the time to file a complaint objecting to discharge. The motion shall be filed before the time has expired.

(c) Grant of Discharge.

(1) In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge unless:

- (A) the debtor is not an individual,
- (B) a complaint objecting to the discharge has been filed,
- (C) the debtor has filed a waiver under § 727(a)(10),
- (D) a motion to dismiss the case under Rule 1017(e) is pending,

(E) a motion to extend the time for filing a complaint objecting to discharge is pending, or

(F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e)(1) is pending, or

(G) the debtor has not paid in full the filing fee prescribed by 28 U.S.C. § 1930(a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code.

(2) Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain.

(d) Applicability of Rules in Part VII. A proceeding commenced by a complaint objecting to discharge is governed by Part VII of these rules.

(e) Order of Discharge. An order of discharge shall conform to the appropriate Official Form.

(f) Registration in Other Districts. An order of discharge that has become final may be registered in any other district by filing a certified copy of the order in the office of the clerk of that district. When so registered the order of discharge shall have the same effect as an order of the court of the district where registered.

(g) Notice of Discharge. The clerk shall promptly mail a copy of the final order of discharge to those specified in subdivision (a) of this rule.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 29, 1999, eff. Dec. 1, 1999; Apr. 17, 2000, eff. Dec. 1, 2000.

Cross References

Discharge—

Effect of, see § 524 of this title.

Exceptions to, see § 523 of this title.

Filing complaint to object to discharge, sixty-day period—

Enlargement permitted as limited in this rule, see rule 9006.

Reduction not permitted, see rule 9006.

Motions; form and service, see rule 9013.

Notice by mail—

Order of discharge, see rule 2002.

Time fixed to file complaint objecting to discharge, see rule 2002.

Time for filing complaint in reconverted liquidation case revived or extended as under this rule, see rule 1019.

Transfer of claim before or after proof of claim filed, see rule 3001.

Library References:

C.J.S. Bankruptcy §§ 291 et seq.

West's Key No. Digests, Bankruptcy ☞3271-3322.

Committee Note

This rule is adapted from former Bankruptcy Rule 404.

Subdivisions (a) and (b) of this rule prescribe the procedure for determining whether a discharge will be granted pursuant to § 727 of the Code. The time fixed by subdivision (a) may be enlarged as provided in subdivision (b).

The notice referred to in subdivision (a) is required to be given by mail and addressed to creditors as provided in Rule 2002.

An extension granted on a motion pursuant to subdivision (b) of the rule would ordinarily benefit only the movant, but its scope and effect would depend on the terms of the extension.

Subdivision (c). If a complaint objecting to discharge is filed, the court's grant or denial of the discharge will be entered at the conclusion of the proceeding as a judgment in accordance with Rule 9021. The inclusion of the clause in subdivision (c) qualifying the duty of the court to grant a discharge when a waiver has been filed is in accord with the construction of the Code. 4 Collier, *Bankruptcy* ¶ 727.12 (15th ed. 1979).

The last sentence of subdivision (c) takes cognizance of § 524(c) of the Code which authorizes a debtor to enter into enforceable reaffirmation agreements only prior to entry of the order of discharge. Immediate entry of that order after expiration of the time fixed for filing complaints objecting to discharge may render it more difficult for a debtor to settle pending litigation to determine the dischargeability of a debt and execute a reaffirmation agreement as part of a settlement.

Subdivision (d). An objection to discharge is required to be made by a complaint, which initiates an adversary proceeding as provided in Rule 7003. Pursuant to Rule 5005, the complaint should be filed in the court in which the case is pending.

Subdivision (e). Official Form No. 27 to which subdivision (e) refers, includes notice of the effects of a discharge specified in § 524(a) of the Code.

Subdivision (f). Registration may facilitate the enforcement of the order of discharge in a district other than that in which it was entered. See 2 Moore's *Federal Practice* ¶ 1.04[2] (2d ed. 1967). Because of the nationwide service of process authorized by Rule 7004, however, registration of the order of discharge is not necessary under these rules to enable a discharged debtor to obtain relief against a creditor proceeding anywhere in the United States in disregard of the injunctive provisions of the order of discharge.

Subdivision (g). Notice of discharge should be mailed promptly after the order becomes final so that creditors may be informed of entry of the order and of its injunctive provisions. Rule 2002 specifies the manner of the notice and persons to whom the notice is to be given.

Committee Note to 1991 Amendments

This rule is amended to conform to § 727(c) which gives the United States trustee the right to object to discharge. This amendment is derived from Rule X-1008(a)(1) and is consistent with Rule 2002. The amendment to subdivision (c) is to prevent a timely motion to dismiss a chapter 7 case for substantial abuse from becoming moot merely because a discharge order has been entered. Reference to the Official Form number in subdivision (e) is deleted in anticipation of future revision and renumbering of the Official Forms.

Committee Note to 1996 Amendments

Subsection (c) is amended to delay entry of the order of discharge if a motion pursuant to Rule 4004(b) to extend the time for filing a complaint objecting to discharge is pending. Also, this subdivision is amended to delay

entry of the discharge order if the debtor has not paid in full the filing fee and the administrative fee required to be paid upon the commencement of the case. If the debtor is authorized to pay the fees in installments in accordance with Rule 1006, the discharge order will not be entered until the final installment has been paid.

The other amendments to this rule are stylistic.

Committee Note to 1999 Amendments

Subdivision (a) is amended to clarify that, in a chapter 7 case, the deadline for filing a complaint objecting to discharge under § 727(a) is 60 days after the first date set for the meeting of creditors, whether or not the meeting is held on that date. The time for filing the complaint is not affected by any delay in the commencement or conclusion of the meeting of creditors. This amendment does not affect the right of any party in interest to file a motion for an extension of time to file a complaint objecting to discharge in accordance with Rule 4004(b).

The substitution of the word “filed” for “made” in subdivision (b) is intended to avoid confusion regarding the time when a motion is “made” for the purpose of applying these rules. See, e.g., *In re Coggin*, 30 F.3d 1443 (11th Cir. 1994). As amended, this rule requires that a motion for an extension of time for filing a complaint objecting to discharge be filed before the time has expired.

Other amendments to this rule are stylistic.

Committee Note to 2000 Amendments

Subdivision (c) is amended so that a discharge will not be granted while a motion requesting an extension of time to file a motion to dismiss the case under § 707(b) is pending. Other amendments are stylistic.

Rule 4005

BURDEN OF PROOF IN OBJECTING TO DISCHARGE

At the trial on a complaint objecting to a discharge, the plaintiff has the burden of proving the objection.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Library References:

C.J.S. Bankruptcy § 308.

West's Key No. Digests, Bankruptcy ☞3315(1, 2).

Committee Note

This rule does not address the burden of going forward with the evidence. Subject to the allocation by the rule of the initial burden of producing evidence and the ultimate burden of persuasion, the rule leaves to the courts the formulation of rules governing the shift of the burden of going forward with the evidence in the light of considerations such as the difficulty of proving the nonexistence of a fact and of establishing a fact as to which the evidence is likely to be more accessible to the debtor than to the objector. See, e.g., *In re Haggerty*, 165 F.2d 977, 979–80 (2d Cir. 1948); *Federal*

Provision Co. v. Ershowsky, 94 F.2d 574, 575 (2d Cir. 1938); *In re Riceputo*, 41 F.Supp. 926, 927-28 (E.D.N.Y.1941).

Rule 4006

NOTICE OF NO DISCHARGE

If an order is entered denying or revoking a discharge or if a waiver of discharge is filed, the clerk, after the order becomes final or the waiver is filed, shall promptly give notice thereof to all creditors in the manner provided in Rule 2002.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Notice by mail, see rule 2002.

Suspension of statute of limitations on debts of debtor, see § 108 of this title.

Library References:

C.J.S. Bankruptcy §§ 30, 275, 311 et seq.

West's Key No. Digests, Bankruptcy Ⓒ2131, 3318.1-3322.

Committee Note

The suspension by § 108(c) of the Code of the statute of limitations affecting any debt of a debtor terminates within 30 days after the debtor is denied a discharge or otherwise loses his right to a discharge. If, however, a debtor's failure to receive a discharge does not come to the attention of his creditors until after the statutes of limitations have run, the debtor obtains substantially the same benefits from his bankruptcy as a debtor who is discharged.

This rule requires the clerk to notify creditors if a debtor fails to obtain a discharge because a waiver of discharge was filed under § 727(a)(10) or as a result of an order denying or revoking the discharge under § 727(a) or (d).

Rule 4007

DETERMINATION OF DISCHARGEABILITY OF A DEBT

(a) Persons Entitled to File Complaint. A debtor or any creditor may file a complaint to obtain a determination of the dischargeability of any debt.

(b) Time for Commencing Proceeding Other Than Under § 523(c) of the Code. A complaint other than under § 523(c) may be filed at any time. A case may be reopened without payment of an additional filing fee for the purpose of filing a complaint to obtain a determination under this rule.

(c) Time for Filing Complaint Under § 523(c) in a Chapter 7 Liquidation, Chapter 11 Reorganization, or Chapter 12 Family Farmer's Debt Adjustment Case; Notice of Time Fixed. A complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice,

the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

(d) Time for Filing Complaint Under § 523(c) in a Chapter 13 Individual's Debt Adjustment Case; Notice of Time Fixed. On motion by a debtor for a discharge under § 1328(b), the court shall enter an order fixing the time to file a complaint to determine the dischargeability of any debt under § 523(c) and shall give no less than 30 days' notice of the time fixed to all creditors in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

(e) Applicability of Rules in Part VII. A proceeding commenced by a complaint filed under this rule is governed by Part VII of these rules.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 29, 1999, eff. Dec. 1, 1999.

Cross References

Costs and attorney fees to consumer debtor upon discharge of debt, see § 523 of this title.

Effect of dismissal on dischargeability of debt, see § 349 of this title.

Filing complaint to determine dischargeability of debt, sixty-day period—

Enlargement permitted as limited in this rule, see rule 9006.

Reduction not permitted, see rule 9006.

Grant or denial of discharge, see rule 4004.

Motions; form and service, see rule 9013.

Notice by mail of time fixed to file complaint, see rule 2002.

Time for filing complaint in reconverted liquidation case revived or extended as under this rule, see rule 1019.

Library References:

C.J.S. Bankruptcy §§ 18, 102, 315 et seq.

West's Key No. Digests, Bankruptcy ☞3341-3423.

Committee Note

This rule prescribes the procedure to be followed when a party requests the court to determine dischargeability of a debt pursuant to § 523 of the Code.

Although a complaint that comes within § 523(c) must ordinarily be filed before determining whether the debtor will be discharged, the court need not determine the issues presented by the complaint filed under this rule until the question of discharge has been determined under Rule 4004. A complaint filed under this rule initiates an adversary proceeding as provided in Rule 7003.

Subdivision (b) does not contain a time limit for filing a complaint to determine the dischargeability of a type of debt listed as nondischargeable under § 523(a)(1), (3), (5), (7), (8), or (9). Jurisdiction over this issue on these debts is held concurrently by the bankruptcy court and any appropriate nonbankruptcy forum.

Subdivision (c) differs from subdivision (b) by imposing a deadline for filing complaints to determine the issue of dischargeability of debts set out in § 523(a)(2), (4) or (6) of the Code. The bankruptcy court has exclusive jurisdiction to determine dischargeability of these debts. If a complaint is not timely filed, the debt is discharged. See § 523(c).

Subdivision (e). The complaint required by this subdivision should be filed in the court in which the case is pending pursuant to Rule 5005.

Committee Note to 1991 Amendments

Subdivision (a) is amended to delete the words “with the court” as unnecessary. See Rules 5005(a) and 9001(3).

Subdivision (c) is amended to apply in chapter 12 cases the same time period that applies in chapter 7 and 11 cases for filing a complaint under § 523(c) of the Code to determine dischargeability of certain debts. Under § 1228(a) of the Code, a chapter 12 discharge does not discharge the debts specified in § 523(a) of the Code.

Committee Note to 1999 Amendments

Subdivision (c) is amended to clarify that the deadline for filing a complaint to determine the dischargeability of a debt under § 523(c) of the Code is 60 days after the first date set for the meeting of creditors, whether or not the meeting is held on that date. The time for filing the complaint is not affected by any delay in the commencement or conclusion of the meeting of creditors. This amendment does not affect the right of any party in interest to file a motion for an extension of time to file a complaint to determine the dischargeability of a debt in accordance with this rule.

The substitution of the word “filed” for “made” in the final sentences of subdivisions (c) and (d) is intended to avoid confusion regarding the time when a motion is “made” for the purpose of applying these rules. See, e.g., *In re Coggin*, 30 F.3d 1443 (11th Cir.1994). As amended, these subdivisions require that a motion for an extension of time be filed before the time has expired.

The other amendments to this rule are stylistic.

Rule 4008

DISCHARGE AND REAFFIRMATION HEARING

Not more than 30 days following the entry of an order granting or denying a discharge, or confirming a plan in a chapter 11 reorganization case concerning an individual debtor and on not less than 10 days notice to the debtor and the trustee, the court may hold a hearing as provided in § 524(d) of the Code. A motion by the debtor for approval of a reaffirmation agreement shall be filed before or at the hearing.

Amended Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Confirmation of reorganization plan, see rule 3020.

Grant or denial of discharge, see rule 4004.

Motions; form and service, see rule 9013.

Library References:

C.J.S. Bankruptcy § 350.

West's Key No. Digests, Bankruptcy C=3415.1-3417.

Committee Note

Section 524(d) of the Code requires the court to hold a hearing to inform an individual debtor concerning the granting or denial of discharge and the law applicable to reaffirmation agreements.

The notice of the § 524(d) hearing may be combined with the notice of the meeting of creditors or entered as a separate order.

The expression “not more than” contained in the first sentence of the rule is for the explicit purpose of requiring the hearing to occur within that time period and cannot be extended.

Committee Note to 1991 Amendments

This rule is changed to conform to § 524(d) of the Code as amended in 1986. A hearing under § 524(d) is not mandatory unless the debtor desires to enter into a reaffirmation agreement.

PART V

COURTS AND CLERKS

Rule

- 5001. Courts and Clerks' Offices
- 5002. Restrictions on Approval of Appointments
- 5003. Records Kept by the Clerk
- 5004. Disqualification
- 5005. Filing and Transmittal of Papers
- 5006. Certification of Copies of Papers
- 5007. Record of Proceedings and Transcripts
- 5008. [Abrogated]
- 5009. Closing Chapter 7 Liquidation, Chapter 12 Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases
- 5010. Reopening Cases
- 5011. Withdrawal and Abstention From Hearing a Proceeding

Rule 5001

COURTS AND CLERKS' OFFICES

(a) Courts Always Open. The courts shall be deemed always open for the purpose of filing any pleading or other proper paper, issuing and returning process, and filing, making, or entering motions, orders and rules.

(b) Trials and Hearings; Orders in Chambers. All trials and hearings shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a judge in chambers and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

(c) Clerk's Office. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and the legal holidays listed in Rule 9006(a).

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Legal holiday defined, see rule 9006.

Library References:

C.J.S. Bankruptcy §§ 5 et seq., 275.

West's Key No. Digests, Bankruptcy Ⓒ2121, 2127.1-2133, 2151, 2156.

Committee Note

This rule is adapted from subdivisions (a), (b) and (c) of Rule 77 F.R.Civ.P.

Committee Note to 1987 Amendments

Rule 9001, as amended, defines court to mean the bankruptcy judge or district judge before whom a case or proceeding is pending. Clerk means the

bankruptcy clerk, if one has been appointed for the district; if a bankruptcy clerk has not been appointed, clerk means clerk of the district court.

Committee Note to 1991 Amendments

Subdivision (c) is amended to refer to Rule 9006(a) for a list of legal holidays. Reference to F.R.Civ.P. is not necessary for this purpose.

Rule 5002

RESTRICTIONS ON APPROVAL OF APPOINTMENTS

(a) Approval of Appointment of Relatives Prohibited. The appointment of an individual as a trustee or examiner pursuant to § 1104 of the Code shall not be approved by the court if the individual is a relative of the bankruptcy judge approving the appointment or the United States trustee in the region in which the case is pending. The employment of an individual as attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§ 327, 1103, or 1114 shall not be approved by the court if the individual is a relative of the bankruptcy judge approving the employment. The employment of an individual as attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§ 327, 1103, or 1114 may be approved by the court if the individual is a relative of the United States trustee in the region in which the case is pending, unless the court finds that the relationship with the United States trustee renders the employment improper under the circumstances of the case. Whenever under this subdivision an individual may not be approved for appointment or employment, the individual's firm, partnership, corporation, or any other form of business association or relationship, and all members, associates and professional employees thereof also may not be approved for appointment or employment.

(b) Judicial Determination That Approval of Appointment or Employment is Improper. A bankruptcy judge may not approve the appointment of a person as a trustee or examiner pursuant to § 1104 of the Code or approve the employment of a person as an attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§ 327, 1103, or 1114 of the Code if that person is or has been so connected with such judge or the United States trustee as to render the appointment or employment improper.

Amended Apr. 29, 1985, eff. Aug. 1, 1985; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Appointment of trustee or examiner, see § 1104 of this title.

Definition of relative, see § 101 of this title.

Nepotism in appointment of receiver or trustee, see § 1910 of Title 18, Crimes and Criminal Procedure.

Relative of justice or judge ineligible to appointment, see § 458 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy §§ 194, 195, 231, 234, 238, 375.

West's Key No. Digests, Bankruptcy ☞3001, 3003, 3004.1, 3029.1, 3030, 3623.1-3626.

Committee Note

This rule is adapted from former Bankruptcy Rule 505(a). The scope of the prohibition on appointment or employment is expanded to include an

examiner appointed under § 1104 of the Code and attorneys and other professional persons whose employment must be approved by the court under § 327 or § 1103.

The rule supplements two statutory provisions. Under 18 U.S.C. § 1910, it is a criminal offense for a judge to appoint a relative as a trustee and, under 28 U.S.C. § 458, a person may not be "appointed to or employed in any office or duty in any court" if he is a relative of any judge of that court. The rule prohibits the appointment or employment of a relative of a bankruptcy judge in a case pending before that bankruptcy judge or before other bankruptcy judges sitting within the district.

A relative is defined in § 101(34) of the Code to be an "individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree." Persons within the third degree under the common law system are as follows: first degree—parents, brothers and sisters, and children; second degree—grandparents, uncles and aunts, first cousins, nephews and nieces, and grandchildren; third degree—great grandparents, great uncles and aunts, first cousins once removed, second cousins, grand nephews and nieces, great grandchildren. Rule 9001 incorporates the definitions of § 101 of the Code.

In order for the policy of this rule to be meaningfully implemented, it is necessary to extend the prohibition against appointment or employment to the firm or other business association of the ineligible person and to those affiliated with the firm or business association. "Firm" is defined in Rule 9001 to include a professional partnership or corporation of attorneys or accountants. All other types of business and professional associations and relationships are covered by this rule.

Committee Note to 1985 Amendments

The amended rule is divided into two subdivisions. Subdivision (a) applies to relatives of bankruptcy judges and subdivision (b) applies to persons who are or have been connected with bankruptcy judges. Subdivision (a) permits no judicial discretion; subdivision (b) allows judicial discretion. In both subdivisions of the amended rule "bankruptcy judge" has been substituted for "judge." The amended rule makes clear that it only applies to relatives of, or persons connected with, the bankruptcy judge. See *In re Hilltop Sand and Gravel, Inc.*, 35 B.R. 412 (N.D. Ohio 1983).

Subdivision (a). The original rule prohibited all bankruptcy judges in a district from appointing or approving the employment of (i) a relative of any bankruptcy judge serving in the district, (ii) the firm or business association of any ineligible relative and (iii) any member or professional employee of the firm or business association of an ineligible relative. In addition, the definition of relative, the third degree relationship under the common law, is quite broad. The restriction on the employment opportunities of relatives of bankruptcy judges was magnified by the fact that many law and accounting firms have practices and offices spanning the nation.

Relatives are not eligible for appointment or employment when the bankruptcy judge to whom they are related makes the appointment or approves the employment. Canon 3(b)(4) of the Code of Judicial Conduct, which provides that the judge "shall exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism," should guide a

bankruptcy judge when a relative of a judge of the same bankruptcy court is considered for appointment or employment.

Subdivision (b), derived from clause (2) of the original rule, makes a person ineligible for appointment or employment if the person is so connected with a bankruptcy judge making the appointment or approving the employment as to render the appointment or approval of employment improper. The caption and text of the subdivision emphasize that application of the connection test is committed to the sound discretion of the bankruptcy judge who is to make the appointment or approve the employment. All relevant circumstances are to be taken into account by the court. The most important of those circumstances include: the nature and duration of the connection with the bankruptcy judge; whether the connection still exists, and, if not, when it was terminated; and the type of appointment or employment. These and other considerations must be carefully evaluated by the bankruptcy judge.

The policy underlying subdivision (b) is essentially the same as the policy embodied in the Code of Judicial Conduct. Canon 2 of the Code of Judicial Conduct instructs a judge to avoid impropriety and the appearance of impropriety, and Canon 3(b)(4) provides that the judge “should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism.” Subdivision (b) alerts the potential appointee or employee and party seeking approval of employment to consider the possible relevance or impact of subdivision (b) and indicates to them that appropriate disclosure must be made to the bankruptcy court before accepting appointment or employment. The information required may be made a part of the application for approval of employment. See Rule 2014(a).

Subdivision (b) departs from the former rule in an important respect: a firm or business association is not prohibited from appointment or employment merely because an individual member or employee of the firm or business association is ineligible under subdivision (b).

The emphasis given to the bankruptcy court's judicial discretion in applying subdivision (b) and the absence of a *per se* extension of ineligibility to the firm or business association or any ineligible individual complement the amendments to subdivision (a). The change is intended to moderate the prior limitation on the employment opportunities of attorneys, accountants, and other professional persons who are or who have been connected in some way with the bankruptcy judge. For example, in all but the most unusual situations, serve as a law clerk to a bankruptcy judge is not the type of connection which alone precludes appointment or employment. Even if a bankruptcy judge determines that it is improper to appoint or approve the employment of a former law clerk in the period immediately after completion of the former law clerk's service with the judge, the firm which employs the former law clerk will, absent other circumstances, be eligible for employment. In each instance all the facts must be considered by the bankruptcy judge.

Subdivision (b) applies to persons connected with a bankruptcy judge. “Person” is defined in § 101 of the Bankruptcy Code to include an “individual, partnership and corporation.” A partnership or corporation may be appointed or employed to serve in a bankruptcy case. If a bankruptcy judge is connected in some way with a partnership or corporation, it is necessary for the court to determine whether the appointment or employment of that partnership or corporation is proper.

The amended rule does not regulate professional relationships which do not require approval of a bankruptcy judge. Disqualification of the bankruptcy judge pursuant to 28 U.S.C. § 455 may, however, be appropriate. Under Rule 5004(a), a bankruptcy judge may find that disqualification from only some aspect of the case, rather than the entire case, is necessary. A situation may also arise in which the disqualifying circumstance only comes to light after services have been performed. Rule 5004(b) provides that if compensation from the estate is sought for these services, the bankruptcy judge is disqualified from awarding compensation.

Committee Note to 1991 Amendments

The 1986 amendments to the Code provide that the United States trustee shall appoint trustees in chapter 7, chapter 12, and chapter 13 cases without the necessity of court approval. This rule is not intended to apply to the appointment of trustees in those cases because it would be inappropriate for a court rule to restrict in advance the exercise of discretion by the executive branch. See COMMITTEE NOTE to Rule 2009.

In chapter 11 cases, a trustee or examiner is appointed by the United States trustee after consultation with parties in interest and subject to court approval. Subdivision (a), as amended, prohibits the approval of the appointment of an individual as a trustee or examiner if the person is a relative of the United States trustee making the appointment or the bankruptcy judge approving the appointment.

The United States trustee neither appoints nor approves the employment of professional persons employed pursuant to §§ 327, 1103, or 1114 of the Code. Therefore, subdivision (a) is not a prohibition against judicial approval of employment of a professional person who is a relative of the United States trustee. However, the United States trustee monitors applications for compensation and reimbursement of expenses and may raise, appear and be heard on issues in the case. Employment of relatives of the United States trustee may be approved unless the court finds, after considering the relationship and the particular circumstances of the case, that the relationship would cause the employment to be improper. As used in this rule, “improper” includes the appearance of impropriety.

United States trustee is defined to include a designee or assistant United States trustee. See Rule 9001. Therefore, subdivision (a) is applicable if the person appointed as trustee or examiner or the professional to be employed is a relative of a designee of the United States trustee or any assistant United States trustee in the region in which the case is pending.

This rule is not exclusive of other laws or rules regulating ethical conduct. See, e.g., 28 CFR § 45.735–5.

Rule 5003

RECORDS KEPT BY THE CLERK

(a) Bankruptcy Dockets. The clerk shall keep a docket in each case under the Code and shall enter thereon each judgment, order, and activity in that case as prescribed by the Director of the Administrative Office of the United States Courts. The entry of a judgment or order in a docket shall show the date the entry is made.

(b) Claims Register. The clerk shall keep in a claims register a list of claims filed in a case when it appears that there will be a distribution to unsecured creditors.

(c) Judgments and Orders. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a correct copy of every final judgment or order affecting title to or lien on real property or for the recovery of money or property, and any other order which the court may direct to be kept. On request of the prevailing party, a correct copy of every judgment or order affecting title to or lien upon real or personal property or for the recovery of money or property shall be kept and indexed with the civil judgments of the district court.

(d) Index of Cases; Certificate of Search. The clerk shall keep indices of all cases and adversary proceedings as prescribed by the Director of the Administrative Office of the United States Courts. On request, the clerk shall make a search of any index and papers in the clerk's custody and certify whether a case or proceeding has been filed in or transferred to the court or if a discharge has been entered in its records.

(e) Register of Mailing Addresses of Federal and State Governmental Units. The United States or the state or territory in which the court is located may file a statement designating its mailing address. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a register that includes these mailing addresses, but the clerk is not required to include in the register more than one mailing address for each department, agency, or instrumentality of the United States or the state or territory. If more than one address for a department, agency, or instrumentality is included in the register, the clerk shall also include information that would enable a user of the register to determine the circumstances when each address is applicable, and mailing notice to only one applicable address is sufficient to provide effective notice. The clerk shall update the register annually, effective January 2 of each year. The mailing address in the register is conclusively presumed to be a proper address for the governmental unit, but the failure to use that mailing address does not invalidate any notice that is otherwise effective under applicable law.

(f) Other Books and Records of the Clerk. The clerk shall keep any other books and records required by the Director of the Administrative Office of the United States Courts.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 17, 2000, eff. Dec. 1, 2000.

Cross References

Judgment effective when entered as provided in this rule, see rule 9021.

Public access to case dockets, see § 107 of this title.

Public record of estate fees to be kept by clerk, see rule 2013.

Library References:

C.J.S. Bankruptcy § 7.

West's Key No. Digests, Bankruptcy ⇨2121.

Committee Note

This rule consolidates former Bankruptcy Rules 504 and 507. The record-keeping duties of the referee under former Bankruptcy Rule 504 are

transferred to the clerk. Subdivisions (a), (c), (d) and (e) are similar to subdivisions (a)–(d) of Rule 79 F.R.Civ.P.

Subdivision (b) requires that filed claims be listed on a claims register only when there may be a distribution to unsecured creditors. Compilation of the list for no asset or nominal asset cases would serve no purpose.

Rule 2013 requires the clerk to maintain a public record of fees paid from the estate and an annual summary thereof.

Former Bankruptcy Rules 507(d) and 508, which made materials in the clerk's office and files available to the public, are not necessary because § 107 of the Code guarantees public access to files and dockets of cases under the Code.

Committee Note to 1987 Amendments

Subdivision (a) has been made more specific.

Subdivision (c) is amended to require that on the request of the prevailing party the clerk of the district court shall keep and index bankruptcy judgments and orders affecting title to or lien upon real or personal property or for the recovery of money or property with the civil judgments of the district court. This requirement is derived from former Rule 9021(b). The Director of the Administrative Office will provide guidance to the bankruptcy and district court clerks regarding appropriate paperwork and retention procedures.

Committee Note to 2000 Amendments

Subdivision (e) is added to provide a source where debtors, their attorneys, and other parties may go to determine whether the United States or the state or territory in which the court is located has filed a statement designating a mailing address for notice purposes. By using the address in the register—which must be available to the public—the sender is assured that the mailing address is proper. But the use of an address that differs from the address included in the register does not invalidate the notice if it is otherwise effective under applicable law.

The register may include a separate mailing address for each department, agency, or instrumentality of the United States or the state or territory. This rule does not require that addresses of municipalities or other local governmental units be included in the register, but the clerk may include them.

Although it is important for the register to be kept current, debtors, their attorneys, and other parties should be able to rely on mailing addresses listed in the register without the need to continuously inquire as to new or amended addresses. Therefore, the clerk must update the register, but only once each year.

To avoid unnecessary cost and burden on the clerk and to keep the register a reasonable length, the clerk is not required to include more than one mailing address for a particular agency, department, or instrumentality of the United States or the state or territory. But if more than one address is included, the clerk is required to include information so that a person using the register could determine when each address should be used. In any event, the inclusion of more than one address for a particular department, agency, or instrumentality does not impose on a person sending a notice the duty to send it to more than one address.

Rule 5004

DISQUALIFICATION

(a) Disqualification of Judge. A bankruptcy judge shall be governed by 28 U.S.C. § 455, and disqualified from presiding over the proceeding or contested matter in which the disqualifying circumstance arises or, if appropriate, shall be disqualified from presiding over the case.

(b) Disqualification of Judge From Allowing Compensation. A bankruptcy judge shall be disqualified from allowing compensation to a person who is a relative of the bankruptcy judge or with whom the judge is so connected as to render it improper for the judge to authorize such compensation.

Amended Apr. 29, 1985, eff. Aug. 1, 1985; amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Definition of relative, see § 101 of this title.
Prohibited appointments, see rule 5002.

Library References:

C.J.S. Judges §§ 62 et seq., 119 et seq.
West's Key No. Digests, Judges ⅈ39-56.

Committee Note

Subdivision (a). Disqualification of a bankruptcy judge is governed by 28 U.S.C. § 455. That section provides that the judge “shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned” or under certain other circumstances. In a case under the Code it is possible that the disqualifying circumstance will be isolated to an adversary proceeding or contested matter. The rule makes it clear that when the disqualifying circumstance is limited in that way the judge need only disqualify himself from presiding over that adversary proceeding or contested matter.

It is possible, however, that even if the disqualifying circumstance arises in connection with an adversary proceeding, the effect will be so pervasive that disqualification from presiding over the case is appropriate. This distinction is consistent with the definition of “proceeding” in 28 U.S.C. § 455(d)(1).

Subdivision (b) precludes a bankruptcy judge from allowing compensation from the estate to a relative or other person closely associated with the judge. The subdivision applies where the judge has not appointed or approved the employment of the person requesting compensation. Perhaps the most frequent application of the subdivision will be in the allowance of administrative expenses under § 503(b)(3)-(5) of the Code. For example, if an attorney or accountant is retained by an indenture trustee who thereafter makes a substantial contribution in a chapter 11 case, the attorney or accountant may seek compensation under § 503(b)(4). If the attorney or accountant is a relative of or associated with the bankruptcy judge, the judge may not allow compensation to the attorney or accountant. Section 101(34) defines relative and Rule 9001 incorporates the definitions of the Code. See the Advisory Committee's Note to Rule 5002.

Committee Note to 1985 Amendments

Subdivision (a) was affected by the Bankruptcy Amendments and Federal Judgeship Act of 1984, P.L. 98-353, 98 Stat. 333. The 1978 Bankruptcy Reform Act, P.L. 95-598, included bankruptcy judges in the definition of United States judges in 28 U.S.C. § 451 and they were therefore subject to the provisions of 28 U.S.C. § 455. This was to become effective on April 1, 1984, P.L. 95-598, § 404(b). Section 113 of P.L. 98-353, however, appears to have rendered the amendment to 28 U.S.C. § 451 ineffective. Subdivision (a) of the rule retains the substance and intent of the earlier draft by making bankruptcy judges subject to 28 U.S.C. § 455.

The word “associated” in subdivision (b) has been changed to “connected” in order to conform with Rule 5002(b).

Committee Note to 1987 Amendments

The rule is amended to be gender neutral. The bankruptcy judge before whom the matter is pending determines whether disqualification is required.

Rule 5005**FILING AND TRANSMITTAL OF PAPERS****(a) Filing.**

(1) *Place of Filing.* The lists, schedules, statements, proofs of claim or interest, complaints, motions, applications, objections and other papers required to be filed by these rules, except as provided in 28 U.S.C. § 1409, shall be filed with the clerk in the district where the case under the Code is pending. The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and they shall be forthwith transmitted to the clerk. The clerk shall not refuse to accept for filing any petition or other paper presented for the purpose of filing solely because it is not presented in proper form as required by these rules or any local rules or practices.

(2) *Filing by Electronic Means.* A court may by local rule permit documents to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A document filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107 of the Code.

(b) Transmittal to the United States Trustee.

(1) The complaints, motions, applications, objections and other papers required to be transmitted to the United States trustee by these rules shall be mailed or delivered to an office of the United States trustee, or to another place designated by the United States trustee, in the district where the case under the Code is pending.

(2) The entity, other than the clerk, transmitting a paper to the United States trustee shall promptly file as proof of such transmittal a verified statement identifying the paper and stating the date on which it was transmitted to the United States trustee.

(3) Nothing in these rules shall require the clerk to transmit any paper to the United States trustee if the United States trustee requests in writing that the paper not be transmitted.

(c) Error in Filing or Transmittal. A paper intended to be filed with the clerk but erroneously delivered to the United States trustee, the trustee, the attorney for the trustee, a bankruptcy judge, a district judge, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the clerk of the bankruptcy court. A paper intended to be transmitted to the United States trustee but erroneously delivered to the clerk, the trustee, the attorney for the trustee, a bankruptcy judge, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the United States trustee. In the interest of justice, the court may order that a paper erroneously delivered shall be deemed filed with the clerk or transmitted to the United States trustee as of the date of its original delivery.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993; Apr. 23, 1996, eff. Dec. 1, 1996.

Cross References

Waiver of trial by jury for failure to file demand as required by this rule, see rule 9015.

Library References:

C.J.S. Bankruptcy § 44.

West's Key No. Digests, Bankruptcy ⇨2321-2325.

Committee Note

Subdivision (a) is an adaptation of Rule 5(e) F.R.Civ.P. Sections 301-304 of the Code and Rules 1002 and 1003 require that cases under the Code be commenced by filing a petition "with the bankruptcy court." Other sections of the Code and other rules refer to or contemplate filing but there is no specific reference to filing with the bankruptcy court. For example, § 501 of the Code requires filing of proofs of claim and Rule 3016(c) requires the filing of a disclosure statement. This subdivision applies to all situations in which filing is required. Except when filing in another district is authorized by 28 U.S.C. § 1473, all papers, including complaints commencing adversary proceedings, must be filed in the court where the case under the Code is pending.

Subdivision (b) is the same as former Bankruptcy Rule 509(c).

Committee Note to 1987 Amendments

Subdivision (a) is amended to conform with the 1984 amendments.

Committee Note to 1991 Amendments

Subdivision (b)(1) is flexible in that it permits the United States trustee to designate a place or places for receiving papers within the district in which the case is pending. Transmittal of papers to the United States trustee may be accomplished by mail or delivery, including delivery by courier, and the technical requirements for service of process are not applicable. Although papers relating to a proceeding commenced in another district pursuant to 28 U.S.C. § 1409 must be filed with the clerk in that district, the papers required to be transmitted to the United States trustee must be mailed or delivered to the United States trustee in the district in which the case under the Code is

pending. The United States trustee in the district in which the case is pending monitors the progress of the case and should be informed of all developments in the case wherever the developments take place.

Subdivision (b)(2) requires that proof of transmittal to the United States trustee be filed with the clerk. If papers are served on the United States trustee by mail or otherwise, the filing of proof of service would satisfy the requirements of this subdivision. This requirement enables the court to assure that papers are actually transmitted to the United States trustee in compliance with the rules. When the rules require that a paper be transmitted to the United States trustee and proof of transmittal has not been filed with the clerk, the court should not schedule a hearing or should take other appropriate action to assure that the paper is transmitted to the United States trustee. The filing of the verified statement with the clerk also enables other parties in interest to determine whether a paper has been transmitted to the United States trustee.

Subdivision (b)(3) is designed to relieve the clerk of any obligation under these rules to transmit any paper to the United States trustee if the United States trustee does not wish to receive it.

Subdivision (c) is amended to include the erroneous delivery of papers intended to be transmitted to the United States trustee.

Committee Note to 1993 Amendments

Subdivision (a) is amended to conform to the 1991 amendment to Rule 5(e) F.R.Civ.P. It is not a suitable role for the office of the clerk to refuse to accept for filing papers not conforming to requirements of form imposed by these rules or by local rules or practices. The enforcement of these rules and local rules is a role for a judge. This amendment does not require the clerk to accept for filing papers sent to the clerk's office by facsimile transmission.

Committee Note to 1996 Amendments

The rule is amended to permit, but not require, courts to adopt local rules that allow filing, signing, or verifying of documents by electronic means. However, such local rules must be consistent with technical standards, if any, promulgated by the Judicial Conference of the United States.

An important benefit to be derived by permitting filing by electronic means is that the extensive volume of paper received and maintained as records in the clerk's office will be reduced substantially. With the receipt of electronic data transmissions by computer, the clerk may maintain records electronically without the need to reproduce them in tangible paper form.

Judicial Conference standards governing the technological aspects of electronic filing will result in uniformity among judicial districts to accommodate an increasingly national bar. By delegating to the Judicial Conference the establishment and future amendment of national standards for electronic filing, the Supreme Court and Congress will be relieved of the burden of reviewing and promulgating detailed rules dealing with complex technological standards. Another reason for leaving to the Judicial Conference the formulation of technological standards for electronic filing is that advances in computer technology occur often, and changes in the technological standards may have to be implemented more frequently than would be feasible by rule amendment under the Rules Enabling Act process.

It is anticipated that standards established by the Judicial Conference will govern technical specifications for electronic data transmission, such as requirements relating to the formatting of data, speed of transmission, means to transmit copies of supporting documentation, and security of communication procedures. In addition, before procedures for electronic filing are implemented, standards must be established to assure the proper maintenance and integrity of the record and to provide appropriate access and retrieval mechanisms. These matters will be governed by local rules until system-wide standards are adopted by the Judicial Conference.

Rule 9009 requires that the Official Forms shall be observed and used "with alterations as may be appropriate." Compliance with local rules and any Judicial Conference standards with respect to the formatting or presentation of electronically transmitted data, to the extent that they do not conform to the Official Forms, would be an appropriate alteration within the meaning of Rule 9009.

These rules require that certain documents be in writing. For example, Rule 3001 states that a proof of claim is a "written statement." Similarly, Rule 3007 provides that an objection to a claim "shall be in writing." Pursuant to the new subdivision (a)(2), any requirement under these rules that a paper be written may be satisfied by filing the document by electronic means, notwithstanding the fact that the clerk neither receives nor prints a paper reproduction of the electronic data.

Section 107(a) of the Code provides that a "paper" filed in a case is a public record open to examination by an entity at reasonable times without charge, except as provided in § 107(b). The amendment to subdivision (a)(2) provides that an electronically filed document is to be treated as such a public record.

Although under subdivision (a)(2) electronically filed documents may be treated as written papers or as signed or verified writings, it is important to emphasize that such treatment is only for the purpose of applying these rules. In addition, local rules and Judicial Conference standards regarding verification must satisfy the requirements of 28 U.S.C. § 1746.

Rule 5006

CERTIFICATION OF COPIES OF PAPERS

The clerk shall issue a certified copy of the record of any proceeding in a case under the Code or of any paper filed with the clerk on payment of any prescribed fee.

Amended Apr. 30, 1991, eff. Aug. 1, 1991.

Library References:

C.J.S. Bankruptcy § 7.

West's Key No. Digests, Bankruptcy ☞2121.

Committee Note

Fees for certification and copying are fixed by the Judicial Conference under 28 U.S.C. § 1930(b).

Rule 1101 F.R.Evid. makes the Federal Rules of Evidence applicable to cases under the Code. Rule 1005 F.R.Evid. allows the contents of an official

record or of a paper filed with the court to be proved by a duly certified copy. A copy certified and issued in accordance with Rule 5006 is accorded authenticity by Rule 902(4) F.R.Evid.

Rule 5007

RECORD OF PROCEEDINGS AND TRANSCRIPTS

(a) Filing of Record or Transcript. The reporter or operator of a recording device shall certify the original notes of testimony, tape recording, or other original record of the proceeding and promptly file them with the clerk. The person preparing any transcript shall promptly file a certified copy.

(b) Transcript Fees. The fees for copies of transcripts shall be charged at rates prescribed by the Judicial Conference of the United States. No fee may be charged for the certified copy filed with the clerk.

(c) Admissibility of Record in Evidence. A certified sound recording or a transcript of a proceeding shall be admissible as prima facie evidence to establish the record.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Reporters, see § 753 of Title 28.

Library References:

C.J.S. Bankruptcy § 7.

West's Key No. Digests, Bankruptcy Ⓒ2121.

Committee Note

This rule supplements 28 U.S.C. § 773. A record of proceedings before the bankruptcy judge is to be made whenever practicable. By whatever means the record is made, subdivision (a) requires that the preparer of the record certify and file the original notes, tape recording, or other form of sound recording of the proceedings. Similarly, if a transcript is requested, the preparer is to file a certified copy with the clerk.

Subdivision (b) is derived from 28 U.S.C. § 753(f).

Subdivision (c) is derived from former Bankruptcy Rule 511(c). This subdivision extends to a sound recording the same evidentiary status as a transcript under 28 U.S.C. § 773(b).

Committee Note to 1991 Amendments

The words "with the clerk" in the final sentence of subdivision (a) are deleted as unnecessary. See Rules 5005(a) and 9001(3).

Rule 5008

[ABROGATED]

Abrogated Apr. 30, 1991, eff. Aug. 1, 1991.

Committee Note to 1991 Amendments

This rule is abrogated in view of the amendments to § 345(b) of the Code and the role of the United States trustee in approving bonds and supervising trustees.

Rule 5009**CLOSING CHAPTER 7 LIQUIDATION, CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT, AND CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASES**

If in a chapter 7, chapter 12, or chapter 13 case the trustee has filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered.

Amended Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Debtor to succeed to any tax attributes of estate, see § 346 of this title.

Dismissal of case; suspension, see rule 1017.

Final decree, see rule 3022.

Postpetition transfers of estate property not avoidable by trustee after case closed, see § 549 of this title.

Scheduled property not administered before case closed deemed abandoned, see § 554 of this title.

Library References:

C.J.S. Bankruptcy §§ 355, 356.

West's Key No. Digests, Bankruptcy ⇨3441.

Committee Note

This rule is the same as § 350(a) of the Code. An estate may be closed even though the period allowed by Rule 3002(c) for filing claims has not expired. The closing of a case may be expedited when a notice of no dividends is given under Rule 2002(e). Dismissal of a case for want of prosecution or failure to pay filing fees is governed by Rule 1017.

Committee Note to 1991 Amendments

The final report and account of the trustee is required to be filed with the court and the United States trustee under §§ 704(9), 1202(b)(1), and 1302(b)(1) of the Code. This amendment facilitates the United States trustee's performance of statutory duties to supervise trustees and administer cases under chapters 7, 12, and 13 pursuant to 28 U.S.C. § 586. In the absence of a timely objection by the United States trustee or a party in interest, the court may discharge the trustee and close the case pursuant to § 350(a) without the need to review the final report and account or to determine the merits of the trustee's certification that the estate has been fully administered.

Rule 3022 governs the closing of chapter 11 cases.

Rule 5010**REOPENING CASES**

A case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Code. In a chapter 7, 12, or 13 case a trustee shall not be appointed by the United States trustee unless the court determines that a trustee is necessary to protect the interests of creditors and the debtor or to insure efficient administration of the case.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Motions; form and service, see rule 9013.

Relief from judgment or order, see rule 9024.

Library References:

C.J.S. Bankruptcy § 357.

West's Key No. Digests, Bankruptcy ⇨3444.10-3444.60.

Committee Note

Section 350(b) of the Code provides: "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause."

Rule 9024, which incorporates Rule 60 F.R.Civ.P., exempts motions to reopen cases under the Code from the one year limitation of Rule 60(b).

Although a case has been closed the court may sometimes act without reopening the case. Under Rule 9024, clerical errors in judgments, orders, or other parts of the record or errors therein caused by oversight or omission may be corrected. A judgment determined to be non-dischargeable pursuant to Rule 4007 may be enforced after a case is closed by a writ of execution obtained pursuant to Rule 7069.

Committee Note to 1987 Amendments

In order to avoid unnecessary cost and delay, the rule is amended to permit reopening of a case without the appointment of a trustee when the services of a trustee are not needed.

Committee Note to 1991 Amendments

This rule is amended to conform to the 1986 amendments to the Code that give the United States trustee the duty to appoint trustees in chapter 7, 12 and 13 cases. See §§ 701, 702(d), 1202(a), and 1302(a) of the Code. In most reopened cases, a trustee is not needed because there are no assets to be administered. Therefore, in the interest of judicial economy, this rule is amended so that a motion will not be necessary unless the United States trustee or a party in interest seeks the appointment of a trustee in the reopened case.

Rule 5011

**WITHDRAWAL AND ABSTENTION FROM
HEARING A PROCEEDING**

(a) Withdrawal. A motion for withdrawal of a case or proceeding shall be heard by a district judge.

(b) Abstention From Hearing a Proceeding. A motion for abstention pursuant to 28 U.S.C. § 1334(c) shall be governed by Rule 9014 and shall be served on the parties to the proceeding.

(c) Effect of Filing of Motion for Withdrawal or Abstention. The filing of a motion for withdrawal of a case or proceeding or for abstention pursuant to 28 U.S.C. § 1334(c) shall not stay the administration of the case or any proceeding therein before the bankruptcy judge except that the bankruptcy judge may stay, on such terms and conditions as are proper, proceedings pending disposition of the motion. A motion for a stay ordinarily shall be presented to the bankruptcy judge. A motion for a stay or relief from a stay filed in the district court shall state why it has not been presented to or obtained from the bankruptcy judge. Relief granted by the district judge shall be on such terms and conditions as the judge deems proper.

Adopted Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Library References:

C.J.S. Bankruptcy §§ 9, 13, 16, 40; Federal Courts §§ 10(1, 2) et seq.
West's Key No. Digests, Bankruptcy Ⓒ2101-2103; Federal Courts Ⓒ41-65.

Committee Note

Motions for withdrawal pursuant to 28 U.S.C. § 157(d) or abstention pursuant to 28 U.S.C. § 1334(c), like all other motions, are to be filed with the clerk as required by Rule 5005(a). If a bankruptcy clerk has been appointed for the district, all motions are filed with the bankruptcy clerk. The method for forwarding withdrawal motions to the district court will be established by administrative procedures.

Subdivision (a). Section 157(d) permits the district court to order withdrawal on its own motion or the motion of a party. Subdivision (a) of this rule makes it clear that the bankruptcy judge will not conduct hearings on a withdrawal motion. The withdrawal decision is committed exclusively to the district court.

Subdivision (b). A decision to abstain under 28 U.S.C. § 1334(c) is not appealable. The district court is vested originally with jurisdiction and the decision to relinquish that jurisdiction must ultimately be a matter for the district court. The bankruptcy judge ordinarily will be in the best position to evaluate the grounds asserted for abstention. This subdivision (b) provides that the initial hearing on the motion is before the bankruptcy judge. The procedure for review of the report and recommendation are governed by Rule 9033.

This rule does not apply to motions under § 305 of the Code for abstention from hearing a case. Judicial decisions will determine the scope of the bankruptcy judge's authority under § 305.

Subdivision (c). Unless the court so orders, proceedings are not stayed when motions are filed for withdrawal or for abstention from hearing a proceeding. Because of the district court's authority over cases and proceedings, the subdivision authorizes the district court to order a stay or modify a stay ordered by the bankruptcy judge.

Committee Note to 1991 Amendments

Subdivision (b) is amended to delete the restriction that limits the role of the bankruptcy court to the filing of a report and recommendation for disposition of a motion for abstention under 28 U.S.C. § 1334(c)(2). This amendment is consistent with § 309(b) of the Judicial Improvements Act of 1990 which amended § 1334(c)(2) so that it allows an appeal to the district court of a bankruptcy court's order determining an abstention motion. This subdivision is also amended to clarify that the motion is a contested matter governed by Rule 9014 and that it must be served on all parties to the proceeding which is the subject of the motion.

PART VI

COLLECTION AND LIQUIDATION OF THE ESTATE

Rule

- 6001. Burden of Proof as to Validity of Postpetition Transfer
- 6002. Accounting by Prior Custodian of Property of the Estate
- 6003. [Abrogated]
- 6004. Use, Sale, or Lease of Property
- 6005. Appraisers and Auctioneers
- 6006. Assumption, Rejection and Assignment of Executory Contracts and Unexpired Leases
- 6007. Abandonment or Disposition of Property
- 6008. Redemption of Property From Lien or Sale
- 6009. Prosecution and Defense of Proceedings by Trustee or Debtor in Possession
- 6010. Proceeding to Avoid Indemnifying Lien or Transfer to Surety

Rule 6001

BURDEN OF PROOF AS TO VALIDITY OF POSTPETITION TRANSFER

Any entity asserting the validity of a transfer under § 549 of the Code shall have the burden of proof.

Library References:

C.J.S. Bankruptcy § 162.
West's Key No. Digests, Bankruptcy ☞2726.1(1).

Committee Note

This rule is derived from former Bankruptcy Rule 603. The Act contained, in § 70d, a provision placing the burden of proof on the same person as did Rule 603. The Code does not contain any directive with respect to the burden of proof. This omission, in all probability, resulted from the intention to leave matters affecting evidence to these rules. See H.Rep. No. 95-595, 95th Cong., 1st Sess. (1977) 293.

Rule 6002

ACCOUNTING BY PRIOR CUSTODIAN OF PROPERTY OF THE ESTATE

(a) Accounting Required. Any custodian required by the Code to deliver property in the custodian's possession or control to the trustee shall promptly file and transmit to the United States trustee a report and account with respect to the property of the estate and the administration thereof.

(b) Examination of Administration. On the filing and transmittal of the report and account required by subdivision (a) of this rule and after an examina-

tion has been made into the superseded administration, after notice and a hearing, the court shall determine the propriety of the administration, including the reasonableness of all disbursements.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993.

Cross References

Accountability of prior custodians for estate property, see § 543 of this title.

Definition of custodian, see § 101 of this title.

Proceedings under this rule as nonadversarial proceedings, see rule 7001.

Property of estate, see § 541 of this title.

Library References:

C.J.S. Bankruptcy § 185.

West's Key No. Digests, Bankruptcy ⇨3064.

Committee Note

“Custodian” is defined in § 101(10) of the Code. The definition includes a trustee or receiver appointed in proceedings not under the Code, as well as an assignee for the benefit of creditors.

This rule prescribes the procedure to be followed by a custodian who under § 543 of the Code is required to deliver property to the trustee and to account for its disposition. The examination under subdivision (b) may be initiated (1) on the motion of the custodian required to account under subdivision (a) for an approval of his account and discharge thereon, (2) on the motion of, or the filing of an objection to the custodian's account by, the trustee or any other party in interest, or (3) on the court's own initiative. Rule 9014 applies to any contested matter arising under this rule.

Section 543(d) is similar to an abstention provision. It grants the bankruptcy court discretion to permit the custodian to remain in possession and control of the property. In that event, the custodian is excused from complying with § 543(a)–(c) and thus would not be required to turn over the property to the trustee. When there is no duty to turn over to the trustee, Rule 6002 would not be applicable.

Committee Note to 1991 Amendments

This rule is amended to enable the United States trustee to review, object to, or to otherwise be heard regarding the custodian's report and accounting. See §§ 307 and 543 of the Code.

Committee Note to 1993 Amendments

Subdivision (b) is amended to conform to the language of § 102(1) of the Code.

Rule 6003

[ABROGATED]

Abrogated Apr. 30, 1991, eff. Aug. 1, 1991.

Committee Note to 1991 Amendments

This rule is abrogated in view of the role of the United States trustee in supervising trustees. Use of estate funds by a trustee or debtor in possession is governed by § 363 of the Code.

Rule 6004

USE, SALE, OR LEASE OF PROPERTY

(a) Notice of Proposed Use, Sale, or Lease of Property. Notice of a proposed use, sale, or lease of property, other than cash collateral, not in the ordinary course of business shall be given pursuant to Rule 2002(a)(2), (c)(1), (i), and (k) and, if applicable, in accordance with § 363(b)(2) of the Code.

(b) Objection to Proposal. Except as provided in subdivisions (c) and (d) of this rule, an objection to a proposed use, sale, or lease of property shall be filed and served not less than five days before the date set for the proposed action or within the time fixed by the court. An objection to the proposed use, sale, or lease of property is governed by Rule 9014.

(c) Sale Free and Clear of Liens and Other Interests. A motion for authority to sell property free and clear of liens or other interests shall be made in accordance with Rule 9014 and shall be served on the parties who have liens or other interests in the property to be sold. The notice required by subdivision (a) of this rule shall include the date of the hearing on the motion and the time within which objections may be filed and served on the debtor in possession or trustee.

(d) Sale of Property Under \$2,500. Notwithstanding subdivision (a) of this rule, when all of the nonexempt property of the estate has an aggregate gross value less than \$2,500, it shall be sufficient to give a general notice of intent to sell such property other than in the ordinary course of business to all creditors, indenture trustees, committees appointed or elected pursuant to the Code, the United States trustee and other persons as the court may direct. An objection to any such sale may be filed and served by a party in interest within 15 days of the mailing of the notice, or within the time fixed by the court. An objection is governed by Rule 9014.

(e) Hearing. If a timely objection is made pursuant to subdivision (b) or (d) of this rule, the date of the hearing thereon may be set in the notice given pursuant to subdivision (a) of this rule.

(f) Conduct of Sale Not In The Ordinary Course of Business.

(1) Public or Private Sale. All sales not in the ordinary course of business may be by private sale or by public auction. Unless it is impracticable, an itemized statement of the property sold, the name of each purchaser, and the price received for each item or lot or for the property as a whole if sold in bulk shall be filed on completion of a sale. If the property is sold by an auctioneer, the auctioneer shall file the statement, transmit a copy thereof to the United States trustee, and furnish a copy to the trustee, debtor in possession, or chapter 13 debtor. If the property is not sold by an auctioneer, the trustee, debtor in possession, or chapter 13 debtor shall file the statement and transmit a copy thereof to the United States trustee.

(2) Execution of Instruments. After a sale in accordance with this rule the debtor, the trustee, or debtor in possession, as the case may be, shall execute any instrument necessary or ordered by the court to effectuate the transfer to the purchaser.

(g) Stay of Order Authorizing Use, Sale, or Lease of Property. An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 29, 1999, eff. Dec. 1, 1999.

Cross References

Appraisers and auctioneers, see rule 6005.

Authorization to operate debtor's business—

Individual debt adjustment case, see § 1304 of this title.

Liquidation case, see § 721 of this title.

Reorganization case, see § 1108 of this title.

Twenty-day notice of property disposition to include certain information, see rule 2002.

Library References:

C.J.S. Bankruptcy §§ 184 et seq.

West's Key No. Digests, Bankruptcy ☞3061-3088.

Committee Note

Subdivisions (a) and (b). Pursuant to § 363(b) of the Code, a trustee or debtor in possession may use, sell, or lease property other than in the ordinary course of business only after notice and hearing. Rule 2002(a), (c) and (i) specifies the time when notice of sale is to be given, the contents of the notice and the persons to whom notice is to be given of sales of property. Subdivision (a) makes those provisions applicable as well to notices for proposed use and lease of property.

The Code does not provide the time within which parties may file objections to a proposed sale. Subdivision (b) of the rule requires the objection to be in writing and filed not less than five days before the proposed action is to take place. The objection should also be served within that time on the person who is proposing to take the action which would be either the trustee or debtor in possession. This time period is subject to change by the court. In some instances there is a need to conduct a sale in a short period of time and the court is given discretion to tailor the requirements to the circumstances.

Subdivision (c). In some situations a notice of sale for different pieces of property to all persons specified in Rule 2002(a) may be uneconomic and inefficient. This is particularly true in some chapter 7 liquidation cases when there is property of relatively little value which must be sold by the trustee. Subdivision (c) allows a general notice of intent to sell when the aggregate value of the estate's property is less than \$2,500. The gross value is the value of the property without regard to the amount of any debt secured by a lien on the property. It is not necessary to give a detailed notice specifying the time and place of a particular sale. Thus, the requirements of Rule 2002(c) need not be met. If this method of providing notice of sales is used, the subdivision specifies that parties in interest may serve and file objections to the proposed sale of any property within the class and the time for service and filing is fixed at not later than 15 days after mailing the notice. The court may fix a different time. Subdivision (c) would have little utility in chapter 11 cases. Pursuant to Rule 2002(i), the court can limit notices of sale to the creditors'

committee appointed under § 1102 of the Code and the same burdens present in a small chapter 7 case would not exist.

Subdivision (d). If a timely objection is filed, a hearing is required with respect to the use, sale, or lease of property. Subdivision (d) renders the filing of an objection tantamount to requesting a hearing so as to require a hearing pursuant to §§ 363(b) and 102(1)(B)(i).

Subdivision (e) is derived in part from former Bankruptcy Rule 606(b) but does not carry forward the requirement of that rule that court approval be obtained for sales of property. Pursuant to § 363(b) court approval is not required unless timely objection is made to the proposed sale. The itemized statement or information required by the subdivision is not necessary when it would be impracticable to prepare it or set forth the information. For example, a liquidation sale of retail goods although not in the ordinary course of business may be on a daily ongoing basis and only summaries may be available.

The duty imposed by paragraph (2) does not affect the power of the bankruptcy court to order third persons to execute instruments transferring property purchased at a sale under this subdivision. See, *e.g.*, *In re Rosenberg*, 138 F.2d 409 (7th Cir. 1943).

Committee Note to 1987 Amendments

Subdivision (a) is amended to conform to the 1984 amendments to § 363(b)(2) of the Code.

Subdivision (b) is amended to provide that an objection to a proposed use, sale, or lease of property creates a contested matter governed by Rule 9014. A similar amendment is made to subdivision (d), which was formerly subdivision (c).

Subdivision (c) is new. Section 363(f) provides that sales free and clear of liens or other interests are only permitted if one of the five statutory requirements is satisfied. Rule 9013 requires that a motion state with particularity the grounds relied upon by the movant. A motion for approval of a sale free and clear of liens or other interests is subject to Rule 9014, service must be made on the parties holding liens or other interests in the property, and notice of the hearing on the motion and the time for filing objections must be included in the notice given under subdivision (a).

Committee Note to 1991 Amendments

This rule is amended to provide notice to the United States trustee of a proposed use, sale or lease of property not in the ordinary course of business. See Rule 2002(k). Subdivision (f)(1) is amended to enable the United States trustee to monitor the progress of the case in accordance with 28 U.S.C. § 586(a)(3)(G).

The words "with the clerk" in subdivision (f)(1) are deleted as unnecessary. See Rules 5005(a) and 9001(3).

Committee Note to 1999 Amendments

Subdivision (g) is added to provide sufficient time for a party to request a stay pending appeal of an order authorizing the use, sale, or lease of property under § 363(b) of the Code before the order is implemented. It does not affect the time for filing a notice of appeal in accordance with Rule 8002.

Rule 6004(g) does not apply to orders regarding the use of cash collateral and does not affect the trustee's right to use, sell, or lease property without a court order to the extent permitted under § 363 of the Code.

The court may, in its discretion, order that Rule 6004(g) is not applicable so that the property may be used, sold, or leased immediately in accordance with the order entered by the court. Alternatively, the court may order that the stay under Rule 6004(g) is for a fixed period less than 10 days.

Rule 6005

APPRAISERS AND AUCTIONEERS

The order of the court approving the employment of an appraiser or auctioneer shall fix the amount or rate of compensation. No officer or employee of the Judicial Branch of the United States or the United States Department of Justice shall be eligible to act as appraiser or auctioneer. No residence or licensing requirement shall disqualify an appraiser or auctioneer from employment.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Employment—

Application for, see rule 2014.

Limitation on appointment, see rule 2013.

Professional persons, see § 327 of this title.

Sharing of compensation prohibited, see § 504 of this title.

Library References:

C.J.S. Bankruptcy §§ 231 et seq.

West's Key No. Digests, Bankruptcy ☞2877, 3029.1, 3155, 3162.

Committee Note

This rule is derived from former Bankruptcy Rule 606(c) and implements § 327 of the Code. Pursuant to § 327, the trustee or debtor in possession may employ one or more appraisers or auctioneers, subject to court approval. This rule requires the court order approving such employment to fix the amount or rate of compensation. The second sentence of the former rule is retained to continue to safeguard against imputations of favoritism which detract from public confidence in bankruptcy administration. The final sentence is to guard against imposition of parochial requirements not warranted by any consideration having to do with sound bankruptcy administration.

Reference should also be made to Rule 2013(a) regarding the limitation on employment of appraisers and auctioneers, and Rule 2014(a) regarding the application for appointment of an appraiser or auctioneer.

Rule 6006

ASSUMPTION, REJECTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

(a) Proceeding to Assume, Reject, or Assign. A proceeding to assume, reject, or assign an executory contract or unexpired lease, other than as part of a plan, is governed by Rule 9014.

(b) Proceeding to Require Trustee to Act. A proceeding by a party to an executory contract or unexpired lease in a chapter 9 municipality case, chapter 11 reorganization case, chapter 12 family farmer's debt adjustment case, or chapter 13 individual's debt adjustment case, to require the trustee, debtor in possession, or debtor to determine whether to assume or reject the contract or lease is governed by Rule 9014.

(c) Notice. Notice of a motion made pursuant to subdivision (a) or (b) of this rule shall be given to the other party to the contract or lease, to other parties in interest as the court may direct, and, except in a chapter 9 municipality case, to the United States trustee.

(d) Stay of Order Authorizing Assignment. An order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993; Apr. 29, 1999, eff. Dec. 1, 1999.

Cross References

Assumption or rejection of executory contracts by trustee, see § 365 of this title.

Commodity contracts—

Compliance by trustee with customer's instructions, see § 765 of this title.

Definition of, see § 761 of this title.

Treatment of customer property, see § 766 of this title.

Motions; form and service, see rule 9013.

Provisions in plan for assumption or rejection of certain executory contracts or unexpired leases, see §§ 1123, 1322 of this title.

Library References:

C.J.S. Bankruptcy §§ 108, 117, 216 et seq.

West's Key No. Digests, Bankruptcy ⇨2834, 3101-3117.

Committee Note

Section 365(a) of the Code requires court approval for the assumption or rejection of an executory contract by the trustee or debtor in possession. The trustee or debtor in possession may also assign an executory contract, § 365(f)(1), but must first assume the contract, § 365(f)(2). Rule 6006 provides a procedure for obtaining court approval. It does not apply to the automatic rejection of contracts which are not assumed in chapter 7 liquidation cases within 60 days after the order for relief, or to the assumption or rejection of contracts in a plan pursuant to § 1123(b)(2) or § 1322(b)(7).

Subdivision (a) by referring to Rule 9014 requires a motion to be brought for the assumption, rejection, or assignment of an executory contract. Normally, the motion will be brought by the trustee, debtor in possession or debtor in a chapter 9 or chapter 13 case. The authorization to assume a contract and to assign it may be sought in a single motion and determined by a single order.

Subdivision (b) makes applicable the same motion procedure when the other party to the contract seeks to require the chapter officer to take some action. Section 365(d)(2) recognizes that this procedure is available to these contractual parties. This provision of the Code and subdivision of the rule apply only in chapter 9, 11 and 13 cases. A motion is not necessary in

chapter 7 cases because in those cases a contract is deemed rejected if the trustee does not timely assume it.

Subdivision (c) provides for the court to set a hearing on a motion made under subdivision (a) or (b). The other party to the contract should be given appropriate notice of the hearing and the court may order that other parties in interest, such as a creditors' committee, also be given notice.

Committee Note to 1987 Amendments

Subdivisions (a) and (b) are amended to conform to the 1984 amendment to § 365 of the Code, which governs assumption or rejection of time share interests.

Section 1113, governing collective bargaining agreements, was added to the Code in 1984. It sets out requirements that must be met before a collective bargaining agreement may be rejected. The application to reject a collective bargaining agreement referred to in § 1113 shall be made by motion. The motion to reject creates a contested matter under Rule 9014, and service is made pursuant to Rule 7004 on the representative of the employees. The time periods set forth in § 1113(d) govern the scheduling of the hearing and disposition of a motion to reject the agreement.

Committee Note to 1991 Amendments

References to time share interests are deleted as unnecessary. Time share interests are within the scope of this rule to the extent that they are governed by § 365 of the Code.

Subdivision (b) is amended to include chapter 12 cases.

Subdivision (c) is amended to enable the United States trustee to appear and be heard on the issues relating to the assumption or rejection of executory contracts and unexpired leases. See §§ 307, 365, and 1113 of the Code.

Committee Note to 1993 Amendments

This rule is amended to delete the requirement for an actual hearing when no request for a hearing is made. See Rule 9014.

Committee Note to 1999 Amendments

Subdivision (d) is added to provide sufficient time for a party to request a stay pending appeal of an order authorizing the assignment of an executory contract or unexpired lease under § 365(f) of the Code before the assignment is consummated. The stay under subdivision (d) does not affect the time for filing a notice of appeal in accordance with Rule 8002.

The court may, in its discretion, order that Rule 6006(d) is not applicable so that the executory contract or unexpired lease may be assigned immediately in accordance with the order entered by the court. Alternatively, the court may order that the stay under Rule 6006(d) is for a fixed period less than 10 days.

Rule 6007

ABANDONMENT OR DISPOSITION OF PROPERTY

(a) Notice of Proposed Abandonment or Disposition; Objections; Hearing. Unless otherwise directed by the court, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property to the United States trustee, all creditors, indenture trustees and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code. A party in interest may file and serve an objection within 15 days of the mailing of the notice, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other entities as the court may direct.

(b) Motion by Party In Interest. A party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate.

(c) [Abrogated].

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993.

Cross References

Abandonment of property burdensome or of little value to estate, see § 554 of this title.

Abandonment of railroad line—

Authorization by court, see § 1170 of this title.

Provision of plan, see § 1172 of this title.

Disposition of property with lien in liquidation case, see § 725 of this title.

Motions; form and service, see rule 9013.

Library References:

C.J.S. Bankruptcy §§ 188, 189.

West's Key No. Digests, Bankruptcy ☞3131-3137.

Committee Note

Sections 554 and 725 of the Code permit and require abandonment and disposition of property of the estate. Pursuant to § 554, the trustee may abandon property but only after notice and hearing. This section is applicable in chapter 7, 11 and 13 cases. Section 725 requires the trustee to dispose of property in which someone other than the estate has an interest, prior to final distribution. It applies only in chapter 7 cases. Notice and hearing are also required conditions. Section 102(1) provides that “notice and hearing” is construed to mean appropriate notice and an opportunity for a hearing. Neither § 554 nor § 725 specify to whom the notices are to be sent. This rule does not apply to § 554(c). Pursuant to that subsection, property is deemed abandoned if it is not administered. A hearing is not required by the statute.

Subdivision (a) requires the notices to be sent to all creditors, indenture trustees, and committees elected under § 705 or appointed under § 1102 of the Code. This may appear burdensome, expensive and inefficient but the subdivision is in keeping with the Code's requirement for notice and the Code's intent to remove the bankruptcy judge from undisputed matters. The burden, expense and inefficiency can be alleviated in large measure by

incorporating the notice into or together with the notice of the meeting of creditors so that separate notices would not be required.

Subdivision (b) implements § 554(b) which specifies that a party in interest may request an order that the trustee abandon property. The rule specifies that the request be by motion and, pursuant to the Code, lists the parties who should receive notice.

Subdivision (c) requires a hearing when an objection under subdivision (a) is filed or a motion under subdivision (b) is made. Filing of an objection is sufficient to require a hearing; a separate or joined request for a hearing is unnecessary since the objection itself is tantamount to such a request.

Committee Note to 1991 Amendments

This rule is amended to conform to the 1986 amendments to 28 U.S.C. § 586(a) and to the Code. The United States trustee monitors the progress of the case and has standing to raise, appear and be heard on the issues relating to the abandonment or other disposition of property. See §§ 307 and 554 of the Code. Committees of retired employees appointed under § 1114 are not entitled to notice under subdivision (a) of this rule.

Committee Note to 1993 Amendments

This rule is amended to clarify that when a motion is made pursuant to subdivision (b), a hearing is not required if a hearing is not requested or if there is no opposition to the motion. See Rule 9014. Other amendments are stylistic and make no substantive change.

Rule 6008

REDEMPTION OF PROPERTY FROM LIEN OR SALE

On motion by the debtor, trustee, or debtor in possession and after hearing on notice as the court may direct, the court may authorize the redemption of property from a lien or from a sale to enforce a lien in accordance with applicable law.

Cross References

Motions; form and service, see rule 9013.

Tangible personal property—

Enforceability of agreement between holder of claim and debtor having consideration based on dischargeable debt, see § 524 of this title.

Redemption of exempt or abandoned property from lien securing dischargeable consumer debt, see § 722 of this title.

Library References:

C.J.S. Bankruptcy §§ 111, 112.

West's Key No. Digests, Bankruptcy ⇨3034.

Committee Note

This rule is derived from former Bankruptcy Rule 609. No provision in the Code addresses the trustee's right of redemption. Ordinarily the secured creditor should be given notice of the trustee's motion so that any objection may be raised to the proposed redemption.

The rule applies also to a debtor exercising a right of redemption pursuant to § 722. A proceeding under that section is governed by Rule 9014.

Rule 6009**PROSECUTION AND DEFENSE OF PROCEEDINGS BY
TRUSTEE OR DEBTOR IN POSSESSION**

With or without court approval, the trustee or debtor in possession may prosecute or may enter an appearance and defend any pending action or proceeding by or against the debtor, or commence and prosecute any action or proceeding in behalf of the estate before any tribunal.

Cross References

Suspension of statutes of limitations, see § 108 of this title.

Voluntary or involuntary petition filed to operate as automatic stay on other proceedings, see § 362 of this title.

Library References:

C.J.S. Bankruptcy §§ 6 et seq., 123 et seq.

West's Key No. Digests, Bankruptcy ☞2151-2165, 2701-2704, 2721-2729, 3066(1-6).

Committee Note

This rule is derived from former Bankruptcy Rule 610.

Rule 6010**PROCEEDING TO AVOID INDEMNIFYING LIEN
OR TRANSFER TO SURETY**

If a lien voidable under § 547 of the Code has been dissolved by the furnishing of a bond or other obligation and the surety thereon has been indemnified by the transfer of, or the creation of a lien upon, nonexempt property of the debtor, the surety shall be joined as a defendant in any proceeding to avoid the indemnifying transfer or lien. Such proceeding is governed by the rules in Part VII.

Amended Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Motions: form and service, see rule 9013.

Library References:

C.J.S. Bankruptcy §§ 123 et seq.

West's Key No. Digests, Bankruptcy ☞2701-2703, 2723.

Committee Note

This rule is derived from former Bankruptcy Rule 612.

Committee Note to 1991 Amendments

This rule is amended to conform to § 550(a) of the Code which provides that the trustee may recover the property transferred in a voidable transfer. The value of the property may be recovered in lieu of the property itself only if the court so orders.

PART VII

ADVERSARY PROCEEDINGS

Rule

- 7001. Scope of Rules of Part VII
- 7002. References to Federal Rules of Civil Procedure
- 7003. Commencement of Adversary Proceeding
- 7004. Process; Service of Summons, Complaint
- 7005. Service and Filing of Pleadings and Other Papers
- 7007. Pleadings Allowed
- 7008. General Rules of Pleading
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- 7010. Form of Pleadings
- 7012. Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings
- 7013. Counterclaim and Cross-Claim
- 7014. Third-Party Practice
- 7015. Amended and Supplemental Pleadings
- 7016. Pre-Trial Procedure; Formulating Issues
- 7017. Parties Plaintiff and Defendant; Capacity
- 7018. Joinder of Claims and Remedies
- 7019. Joinder of Persons Needed for Just Determination
- 7020. Permissive Joinder of Parties
- 7021. Misjoinder and Non-Joinder of Parties
- 7022. Interpleader
- 7023. Class Proceedings
- 7023.1. Derivative Proceedings by Shareholders
- 7023.2. Adversary Proceedings Relating to Unincorporated Associations
- 7024. Intervention
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- 7026. General Provisions Governing Discovery
- 7027. Depositions Before Adversary Proceedings or Pending Appeal
- 7028. Persons Before Whom Depositions May Be Taken
- 7029. Stipulations Regarding Discovery Procedure
- 7030. Depositions Upon Oral Examination
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- 7035. Physical and Mental Examination of Persons
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- 7040. Assignment of Cases for Trial
- 7041. Dismissal of Adversary Proceedings
- 7042. Consolidation of Adversary Proceedings; Separate Trials
- 7052. Findings by the Court
- 7054. Judgments; Costs
- 7055. Default
- 7056. Summary Judgment

Rule

- 7062. Stay of Proceedings to Enforce a Judgment
- 7064. Seizure of Person or Property
- 7065. Injunctions
- 7067. Deposit in Court
- 7068. Offer of Judgment
- 7069. Execution
- 7070. Judgment for Specific Acts: Vesting Title
- 7071. Process in Behalf of and Against Persons Not Parties
- 7087. Transfer of Adversary Proceeding

Rule 7001**SCOPE OF RULES OF PART VII**

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

- (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002;
- (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d);
- (3) a proceeding to obtain approval under § 363(h) for the sale of both the interest of the estate and of a co-owner in property;
- (4) a proceeding to object to or revoke a discharge;
- (5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;
- (6) a proceeding to determine the dischargeability of a debt;
- (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;
- (8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;
- (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; or
- (10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. § 1452.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 29, 1999, eff. Dec. 1, 1999.

Cross References

Adversarial nature of proceeding—

Avoidance of indemnifying lien or transfer to surety, see rule 6010.

Commenced by complaint objecting to discharge, see rule 4004.

Commenced by complaint to obtain determination of debt's dischargeability, see rule 4007.

Joinder of objection to claim with demand for relief, see rule 3007.

Liability of sureties on bond or stipulation or other undertaking, see rule 9025.

Applicability of rules of this part to removed claim or cause of action, see rule 9027.

Contested matters, applicability of and notice to parties of applicability of rules of this part, see rule 9014.

Effect of amendment of Federal Rules of Civil Procedure, see rule 9032.

Meanings of words in Federal Rules of Civil Procedure when applicable, see rule 9002.

Library References:

C.J.S. Bankruptcy §§ 5 et seq., 117, 275.
West's Key No. Digests, Bankruptcy Ⓒ2127.1-2133, 2151-2165.

Committee Note

The rules in Part VII govern the procedural aspects of litigation involving the matters referred to in this Rule 7001. Under Rule 9014 some of the Part VII rules also apply to contested matters.

These Part VII rules are based on the premise that to the extent possible practice before the bankruptcy courts and the district courts should be the same. These rules either incorporate or are adaptations of most of the Federal Rules of Civil Procedure. Although the Part VII rules of the former Bankruptcy Rules also relied heavily on the F.R.Civ.P., the former Part VII rules departed from the civil practice in two significant ways: a trial or pretrial conference had to be scheduled as soon as the adversary proceeding was filed and pleadings had to be filed within periods shorter than those established by the F.R.Civ.P. These departures from the civil practice have been eliminated.

The content and numbering of these Part VII rules correlates to the content and numbering of the F.R.Civ.P. Most, but not all, of the F.R.Civ.P. have a comparable Part VII rule. When there is no Part VII rule with a number corresponding to a particular F.R.Civ.P., Parts V and IX of these rules must be consulted to determine if one of the rules in those parts deals with the subject. The list below indicates the F.R.Civ.P., or subdivision thereof, covered by a rule in either Part V or Part IX.

<u>F.R.Civ.P.</u>	<u>Rule in Part V or IX</u>
6	9006
7(b)	9013
10(a)	9004(b)
11	9011
38, 39	9015(a)-(e)
47-51	9015(f)
43, 44, 44.1	9017
45	9016
58	9021
59	9023
60	9024
61	9005
63	9028
77(a), (b), (c)	5001
77(d)	9022(d)
79(a)-(d)	5003
81(c)	9027
83	9029
92	9030

Proceedings to which the rules in Part VII apply directly include those brought to avoid transfers by the debtor under §§ 544, 545, 547, 548 and 549 of the Code; subject to important exceptions, proceedings to recover money or property; proceedings on bonds under Rules 5008(d) and 9025; proceedings under Rule 4004 to determine whether a discharge in a chapter 7 or 11 case should be denied because of an objection grounded on § 727 and proceedings in a chapter 7 or 13 case to revoke a discharge as provided in §§ 727(d) or

1328(e); and proceedings initiated pursuant to § 523(c) of the Code to determine the dischargeability of a particular debt. Those proceedings were classified as adversary proceedings under former Bankruptcy Rule 701.

Also included as adversary proceedings are proceedings to revoke an order of confirmation of a plan in a chapter 11 or 13 case as provided in §§ 1144 and 1330, to subordinate under § 510(c), other than as part of a plan, an allowed claim or interest, and to sell under § 363(h) both the interest of the estate and a co-owner in property.

Declaratory judgments with respect to the subject matter of the various adversary proceedings are also adversary proceedings.

Any claim or cause of action removed to a bankruptcy court pursuant to 28 U.S.C. § 1478 is also an adversary proceeding.

Unlike former Bankruptcy Rule 701, requests for relief from an automatic stay do not commence an adversary proceeding. Section 362(e) of the Code and Rule 4001 establish an expedited schedule for judicial disposition of requests for relief from the automatic stay. The formalities of the adversary proceeding process and the time for serving pleadings are not well suited to the expedited schedule. The motion practice prescribed in Rule 4001 is best suited to such requests because the court has the flexibility to fix hearing dates and other deadlines appropriate to the particular situation.

Clause (1) contains important exceptions. A person with an interest in property in the possession of the trustee or debtor in possession may seek to recover or reclaim that property under § 554(b) or § 725 of the Code. Since many attempts to recover or reclaim property under these two sections do not generate disputes, application of the formalities of the Part VII Rules is not appropriate. Also excluded from adversary proceedings is litigation arising from an examination under Rule 2017 of a debtor's payments of money or transfers of property to an attorney representing the debtor in a case under the Code or an examination of a superseded administration under Rule 6002.

Exemptions and objections thereto are governed by Rule 4003. Filing of proofs of claim and the allowances thereof are governed by Rules 3001–3005, and objections to claims are governed by Rule 3007. When an objection to a claim is joined with a demand for relief of the kind specified in this Rule 7001, the matter becomes an adversary proceeding. See Rule 3007.

Committee Note to 1987 Amendments

Another exception is added to clause (1). A trustee may proceed by motion to recover property from the debtor.

Committee Note to 1991 Amendments

Clauses (5) and (8) are amended to include chapter 12 plans.

Committee Note to 1999 Amendments

This rule is amended to recognize that an adversary proceeding is not necessary to obtain injunctive or other equitable relief that is provided for in a plan under circumstances in which substantive law permits the relief. Other amendments are stylistic.

Rule 7002**REFERENCES TO FEDERAL RULES
OF CIVIL PROCEDURE**

Whenever a Federal Rule of Civil Procedure applicable to adversary proceedings makes reference to another Federal Rule of Civil Procedure, the reference shall be read as a reference to the Federal Rule of Civil Procedure as modified in this Part VII.

Library References:

C.J.S. Bankruptcy §§ 5 et seq., 117, 275.

West's Key No. Digests, Bankruptcy Ⓒ2127.1-2133, 2151-2165.

Committee Note

Rules 5, 12, 13, 14, 25, 27, 30, 41 and 52 F.R.Civ.P. are made applicable to adversary proceedings by Part VII. Each of those rules contains a cross reference to another Federal Rule; however, the Part VII rule which incorporates the cross-referenced Federal Rule modifies the Federal Rule in some way. Under this Rule 7002 the cross reference is to the Federal Rule as modified by Part VII. For example, Rule 5 F.R.Civ.P., which is made applicable to adversary proceedings by Rule 7005, contains a reference to Rule 4 F.R.Civ.P. Under this Rule 7002, the cross reference is to Rule 4 F.R.Civ.P. as modified by Rule 7004.

Rules 7, 10, 12, 13, 14, 19, 22, 23.2, 24-37, 41, 45, 49, 50, 52, 55, 59, 60, 62 F.R.Civ.P. are made applicable to adversary proceedings by Part VII or generally to cases under the Code by Part IX. Each of those Federal Rules contains a cross reference to another Federal Rule which is not modified by the Part VII or Part IX rule which makes the cross-referenced Federal Rule applicable. Since the cross-referenced rule is not modified by a Part VII rule this Rule 7002 does not apply.

Rule 7003**COMMENCEMENT OF ADVERSARY PROCEEDING**

Rule 3 F.R.Civ.P. applies in adversary proceedings.

Library References:

C.J.S. Bankruptcy § 26.

West's Key No. Digests, Bankruptcy Ⓒ2156.

Committee Note

Rule 5005(a) requires that a complaint commencing an adversary proceeding be filed with the court in which the case under the Code is pending unless 28 U.S.C. § 1473 authorizes the filing of the complaint in another district.

Rule 7004

PROCESS; SERVICE OF SUMMONS, COMPLAINT

(a) Summons; Service; Proof of Service. Rule 4(a), (b), (c)(1), (d)(1), (e)–(j), (l), and (m) F.R.Civ.P. applies in adversary proceedings. Personal service pursuant to Rule 4(e)–(j) F.R.Civ.P. may be made by any person at least 18 years of age who is not a party, and the summons may be delivered by the clerk to any such person.

(b) Service by First Class Mail. Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)–(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

(2) Upon an infant or an incompetent person, by mailing a copy of the summons and complaint to the person upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state. The summons and complaint in that case shall be addressed to the person required to be served at that person's dwelling house or usual place of abode or at the place where the person regularly conducts a business or profession.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.

(5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to

multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if a copy of the summons and complaint is mailed to the entity upon whom service is prescribed to be served by any statute of the United States or by the law of the state in which service is made when an action is brought against such a defendant in the court of general jurisdiction of that state.

(8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision.

(9) Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or statement of affairs or to such other address as the debtor may designate in a filed writing and, if the debtor is represented by an attorney, to the attorney at the attorney's post-office address.

(10) Upon the United States trustee, when the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending.

(c) Service by Publication. If a party to an adversary proceeding to determine or protect rights in property in the custody of the court cannot be served as provided in Rule 4(e)–(j) F.R.Civ.P. or subdivision (b) of this rule, the court may order the summons and complaint to be served by mailing copies thereof by first class mail postage prepaid, to the party's last known address and by at least one publication in such manner and form as the court may direct.

(d) Nationwide Service of Process. The summons and complaint and all other process except a subpoena may be served anywhere in the United States.

(e) Summons: Time Limit for Service Within the United States. Service made under Rule 4(e), (g), (h)(1), (i), or (j)(2) F.R.Civ.P. shall be by delivery of the summons and complaint within 10 days after the summons is issued. If service is by any authorized form of mail, the summons and complaint

shall be deposited in the mail within 10 days after the summons is issued. If a summons is not timely delivered or mailed, another summons shall be issued and served. This subdivision does not apply to service in a foreign country.

(f) Personal Jurisdiction. If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service in accordance with this rule or the subdivisions of Rule 4 F.R.Civ.P. made applicable by these rules is effective to establish personal jurisdiction over the person of any defendant with respect to a case under the Code or a civil proceeding arising under the Code, or arising in or related to a case under the Code.

(g) [Abrogated].

(h) Service of Process on an Insured Depository Institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless—

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991. Subsec. (h) added by Pub.L. 103-394, § 114, eff. October 22, 1994; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 29, 1999, eff. Dec. 1, 1999.

Cross References

Contested matters, request for relief by motion served in manner provided in this rule, see rule 9014.

Form of pleadings, see rule 7010.

Service of—

Motion for substitution of parties, see rule 7025.

Notice of depositions before adversary proceedings or pending appeal, see rule 7027.

Pleadings and other papers, see rule 7005.

Summons and involuntary petition—

Manner of service, see rule 1010.

Time limitations, see rule 1010.

Library References:

C.J.S. Bankruptcy §§ 30, 57.

West's Key No. Digests, Bankruptcy ☞2158.

Official Forms

Caption of adversary proceedings, see form 16C.

Committee Note

Subdivision (a) of the rule, by incorporation of Rule 4(a), (b), (d), (e) and (g)–(i) F.R.Civ.P., governs the mechanics of issuance of a summons and its

form, the manner of service on parties and their representatives, and service in foreign countries.

Subdivision (b), which is the same as former Rule 704(c), authorizes service of process by first class mail postage prepaid. This rule retains the modes of service contained in former Bankruptcy Rule 704. The former practice, in effect since 1976, has proven satisfactory.

Subdivision (c) is derived from former Bankruptcy Rule 704(d)(2).

Subdivision (d). Nationwide service of process is authorized by subdivision (d).

Subdivision (e) authorizes service by delivery on individuals and corporations in foreign countries if the party to be served is the debtor or any person required to perform the duties of the debtor and certain other persons, the adversary proceeding involves property in the custody of the bankruptcy court, or if federal or state law authorizes such service in a foreign country.

Subdivision (f). The requirement of former Bankruptcy Rule 704 that the summons be served within 10 days is carried over into these rules by subdivision (f).

Committee Note to 1987 Amendments

Subdivision (a) is amended to make Rule 4(j) F.R.Civ.P. applicable to service of the summons. If service is not completed within 120 days of the filing of the complaint, the complaint may be dismissed.

Technical amendments are made to subdivisions (a), (b), (e), and (f) to conform to recent amendments to Rule 4 F.R.Civ.P.

Committee Note to 1991 Amendments

The United States trustee may serve as trustee in a case pursuant to 28 U.S.C. § 586(a)(2) and §§ 701(a)(2), 1202(a), and 1302(a) of the Code. This rule is amended to avoid the necessity of mailing copies of a summons and complaint or other pleadings to the Attorney General and to the United States attorney when service on the United States trustee is required only because the United States trustee is acting as a case trustee. For example, a proceeding commenced by a creditor to dismiss a case for unreasonable delay under § 707(a) is governed by Rule 9014 which requires service on the trustee pursuant to the requirements of Rule 7004 for the service of a summons and complaint. The Attorney General and the United States attorney would have no interest in receiving a copy of the motion to dismiss. Mailing to the office of the United States trustee when acting as the case trustee is sufficient in such cases.

The words "with the court" in subdivision (b)(9) are deleted as unnecessary. See Rules 5005(a) and 9001(3).

The new paragraph (10) of subdivision (b) does not affect requirements for service of process on the United States trustee when sued or otherwise a party to a litigation unrelated to its capacity as a trustee. If a proceeding is commenced against the United States trustee which is unrelated to the United States trustee's role as trustee, the requirements of paragraph (5) of subdivision (b) of this rule would apply.

Subdivision (g) is added in anticipation of substantial amendment to, and restructuring of subdivisions of, Rule 4 F.R.Civ.P. Any amendment to Rule 4

will not affect service in bankruptcy cases and proceedings until further amendment to the Bankruptcy Rules. On January 1, 1990, Rule 4 F.R.Civ.P. read as follows:

Rule 4 F.R.Civ.P.

PROCESS

(a) Summons: issuance. Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver the summons of the plaintiff or the plaintiff's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

(b) Same: form. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of the defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint. When, under Rule 4(e), service is made pursuant to a statute or rule of court of a state, the summons, or notice, or order in lieu of summons shall correspond as nearly as may be to that required by the statute or rule.

(c) Service.

(1) [Not applicable.]

(2)(A) [Not applicable.]

(B) [Not applicable.]

(C) A summons and complaint may be served upon a defendant of any class referred to in paragraph (1) or (3) of subdivision (d) of this rule—

(i) pursuant to the law of the State in which the district court held for the service of summons or other like process upon such defendant in an action brought in the courts of general jurisdiction of that State, or

(ii) [Not applicable.]

(D) [Not applicable.]

(E) [Not applicable.]

(3) [Not applicable.]

(d) Summons and complaint: person to be served. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(2) Upon an infant or an incompetent person, by serving the summons and complaint in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which the subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court and by sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency.

(5) Upon an officer or agency of the United States, by serving the United States and by sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency. If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the complaint to the chief executive officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

(e) Summons: service upon party not inhabitant of or found within state. Whenever a statute of the United States or an order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state in which the district court is held, service may be made under the circumstances and in the manner prescribed by the statute or order, or, if there is no provision therein prescribing the manner of service, in a manner stated in this rule. Whenever a statute or rule of court of the state in which the district court is held provides (1) for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, or (2) for service upon or notice to such a party to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of the party's property located within the state, service may in either case be made under the circumstances and in the manner prescribed in the statute or rule.

(f) [Not applicable.]

(g) Return. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than a United States marshal or deputy United States marshal, such person shall make affidavit thereof. If service is made under subdivision (c)(2)(C)(ii) of this rule, return shall be made by the sender's filing with the court the acknowledgement received pursuant to such subdivision. Failure to make proof of service does not affect the validity of the service.

(h) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(i) Alternative provisions for service in a foreign country.

(1) Manner. When the federal or state law referred to in subdivision (e) of this rule authorizes service upon a party not an inhabitant of or found within the state in which the district court is held, and service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made: (A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivery to the individual personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail, requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or (E) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the district court or by the foreign court. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

(2) Return. Proof of service may be made as prescribed by subdivision (g) of this rule, or by the law of the foreign country, or by order of the court. When service is made pursuant to subparagraph (1)(D) of this subdivision, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(j) Summons: time limit for service. If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion. This subdivision shall not apply to service in a foreign country pursuant to subdivision (i) of this rule.

Committee Note to 1996 Amendments

The purpose of these amendments is to conform the rule to the 1993 revisions of Rule 4 F.R.Civ.P. and to make stylistic improvements. Rule 7004, as amended, continues to provide for service by first class mail as an

alternative to the methods of personal service provided in Rule 4 F.R.Civ.P., except as provided in the new subdivision (h).

Rule 4(d)(2) F.R.Civ.P. provides a procedure by which the plaintiff may request by first class mail that the defendant waive service of the summons. This procedure is not applicable in adversary proceedings because it is not necessary in view of the availability of service by mail pursuant to Rule 7004(b). However, if a written waiver of service of a summons is made in an adversary proceeding, Rule 4(d)(1) F.R.Civ.P. applies so that the defendant does not thereby waive any objection to the venue or the jurisdiction of the court over the person of the defendant.

Subdivisions (b)(4) and (b)(5) are amended to conform to the 1993 amendments to Rule 4(i)(3) F.R.Civ.P., which protect the plaintiff from the hazard of losing a substantive right because of failure to comply with the requirements of multiple service when the United States or an officer, agency, or corporation of the United States is a defendant. These subdivisions also are amended to require that the summons and complaint be addressed to the civil process clerk at the office of the United States attorney.

Subdivision (e), which has governed service in a foreign country, is abrogated and Rule 4(f) and (h)(2) F.R.Civ.P., as substantially revised in 1993, are made applicable in adversary proceedings.

The new subdivision (f) is consistent with the 1993 amendments to F.R.Civ.P. 4(k)(2). It clarifies that service or filing a waiver of service in accordance with this rule or the applicable subdivisions of F.R.Civ.P. 4 is sufficient to establish personal jurisdiction over the defendant. See the committee note to the 1993 amendments to Rule 4 F.R.Civ.P.

Subdivision (g) is abrogated. This subdivision was promulgated in 1991 so that anticipated revisions to Rule 4 F.R.Civ.P. would not affect service of process in adversary proceedings until further amendment to Rule 7004.

Subdivision (h) and the first phrase of subdivision (b) were added by § 114 of the Bankruptcy Reform Act of 1994, Pub.L. No. 103-394, 108 Stat. 4106.

Committee Note to 1999 Amendments

Subdivision (e) is amended so that the ten-day time limit for service of a summons does not apply if the summons is served in a foreign country.

Rule 7005

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

Rule 5 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Form of pleadings, see rule 7010.

Service of—

Motion for substitution, see rule 7025.

Motion to intervene, see rule 7024.

Notice of judgment or order, see rule 9022.

Requests for depositions and discovery, see rule 7027 et seq.

Library References:

C.J.S. Bankruptcy §§ 30, 57; Federal Civil Procedure §§ 261, 349.
West's Key No. Digests, Bankruptcy Ⓒ2158; Federal Civil Procedure Ⓒ664, 665.

Official Forms

Caption of adversary proceedings, see form 16C.

Committee Note

Rule 5 F.R.Civ.P. refers to Rule 4 F.R.Civ.P. Pursuant to Rule 7002 this reference is to Rule 4 F.R.Civ.P. as incorporated and modified by Rule 7004.

Rule 7007**PLEADINGS ALLOWED**

Rule 7 F.R.Civ.P. applies in adversary proceedings.

Cross References

Amended and supplemental pleadings, see rule 7015.
Counterclaim and cross-claim, see rule 7013.
Form of pleadings, see rule 7010.
Service and filing of pleadings and other papers, see rule 7005.
Third-party practice, see rule 7014.

Library References:

C.J.S. Bankruptcy §§ 31, 89, 160 et seq., 225, 230, 305 et seq., 375 et seq., 436 et seq.
West's Key No. Digests, Bankruptcy Ⓒ2162, 2435.1, 2680, 2724, 2802, 3066(2), 3117, 3313, 3384, 3593, 3626, 3715(3), 3716.20(9), 3716.30(8).

Official Forms

Caption of adversary proceedings, see form 16C.

Rule 7008**GENERAL RULES OF PLEADING**

(a) Applicability of Rule 8 F.R.Civ.P. Rule 8 F.R.Civ.P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending. In an adversary proceeding before a bankruptcy judge, the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the proceeding is core or non-core and, if non-core, that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy judge.

(b) Attorney's Fees. A request for an award of attorney's fees shall be pleaded as a claim in a complaint, cross-claim, third-party complaint, answer, or reply as may be appropriate.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Amended and supplemental pleadings, see rule 7015.

Applicability of this rule in proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Defenses and objections, see rule 7012.

Joinder of claims and remedies, see rule 7013.

Library References:

C.J.S. Bankruptcy §§ 31 et seq., 101, 160 et seq., 225 et seq., 305 et seq., 375 et seq., 436 et seq.

West's Key No. Digests, Bankruptcy ⇨2162, 2181-2191, 2435.1, 2680, 2724, 2802, 3066(1), 3117, 3202.1, 3313, 3384, 3593, 3626, 3715(3), 3716.20(9), 3716.30(8).

Committee Note to 1987 Amendments

Proceedings before a bankruptcy judge are either core or non-core. 28 U.S.C. § 157. A bankruptcy judge may enter a final order or judgment in a core proceeding. In a non-core proceeding, absent consent of the parties, the bankruptcy judge may not enter a final order or judgment but may only submit proposed findings of fact and conclusions of law to the district judge who will enter the final order or judgment. 28 U.S.C. § 157(c)(1). The amendment to subdivision (a) of this rule requires an allegation as to whether a proceeding is core or non-core. A party who alleges that the proceeding is non-core shall state whether the party does or does not consent to the entry of a final order or judgment by the bankruptcy judge. Failure to include the statement of consent does not constitute consent. Only express consent in the pleadings or otherwise is effective to authorize entry of a final order or judgment by the bankruptcy judge in a non-core proceeding. Amendments to Rule 7012 require that the defendant admit or deny the allegation as to whether the proceeding is core or non-core.

Rule 7009**PLEADING SPECIAL MATTERS**

Rule 9 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Parties plaintiff and defendant; capacity, see rule 7017.

Pleading affirmative defenses, see rule 7008.

Library References:

C.J.S. Bankruptcy §§ 31, 89, 160 et seq., 225, 230, 305 et seq., 375 et seq., 436 et seq.

West's Key No. Digests, Bankruptcy ⇨2162, 2435.1, 2680, 2724, 2802, 3066(1), 3117, 3313, 3384, 3593, 3626, 3715(3), 3716.20(9), 3716.30(8).

Rule 7010**FORM OF PLEADINGS**

Rule 10 F.R.Civ.P. applies in adversary proceedings, except that the caption of each pleading in such a proceeding shall conform substantially to the appropriate Official Form.

Amended Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Applicability of this rule in proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Complaint, pleadings, and other papers, see rule 7004 et seq.

General requirements of form for adversarial pleading or paper, see rule 9004.

Library References:

C.J.S. Bankruptcy §§ 31, 89, 160 et seq., 225, 230, 305 et seq., 375 et seq., 436 et seq.

West's Key No. Digests, Bankruptcy ⇨2162, 2435.1, 2680, 2724, 2802, 3066(1), 3117, 3313, 3384, 3593, 3626, 3715(3), 3716.20(9), 3716.30(8).

Official Forms

Caption of adversary proceedings, see form 16C.

Committee Note to 1991 Amendments

Reference to the Official Form number is deleted in anticipation of future revision and renumbering of the Official Forms.

Rule 7012

DEFENSES AND OBJECTIONS—WHEN AND HOW PRESENTED—BY PLEADING OR MOTION—MOTION FOR JUDGMENT ON THE PLEADINGS

(a) When Presented. If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court. The court shall prescribe the time for service of the answer when service of a complaint is made by publication or upon a party in a foreign country. A party served with a pleading stating a cross-claim shall serve an answer thereto within 20 days after service. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to a complaint within 35 days after the issuance of the summons, and shall serve an answer to a cross-claim, or a reply to a counterclaim, within 35 days after service upon the United States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of a more definite statement.

(b) Applicability of Rule 12(b)–(h) F.R.Civ.P. Rule 12(b)–(h) F.R.Civ.P. applies in adversary proceedings. A responsive pleading shall admit or deny an allegation that the proceeding is core or non-core. If the response is that the proceeding is non-core, it shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. In non-core proceedings final orders and judgments shall not be entered on the bankruptcy judge's order except with the express consent of the parties.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Averments of defense in separate statements, see rule 7010.
Counterclaim and cross-claim, see rule 7013.
Defenses of third-party defendant, see rule 7014.
Pleadings allowed, see rule 7007.
Removed actions, see rule 9027.
Waiver of sovereign immunity, see § 106 of this title.

Library References:

C.J.S. Bankruptcy §§ 31, 89, 160 et seq., 225, 230, 305 et seq., 375 et seq., 436 et seq.
West's Key No. Digests, Bankruptcy ☞2162, 2435.1, 2680, 2724, 2802, 3066(1), 3117, 3313, 3384, 3593, 3626, 3715(3), 3716.20(9), 3716.30(8).

Committee Note

Subdivision (a) continues the practice of former Bankruptcy Rule 712(a) by requiring that the answer to a complaint be filed within 30 days after the issuance of the summons. Under Rule 7004(f), the summons must be served within 10 days of issuance. The other pleading periods in adversary proceedings are the same as those in civil actions before the district courts, except that the United States is allowed 35 rather than 60 days to respond.

Rule 12(b)(7) and (h)(2) F.R.Civ.P. refers to Rule 19 F.R.Civ.P. Pursuant to Rule 7002 these references are to Rule 19 F.R.Civ.P. as incorporated and modified by Rule 7019.

Committee Note to 1987 Amendments

The amendment to subdivision (b) requires a response to the allegation that the proceeding is core or non-core. A final order of judgment may not be entered in a non-core proceeding heard by a bankruptcy judge unless all parties expressly consent. 28 U.S.C. § 157(c).

Rule 7013**COUNTERCLAIM AND CROSS-CLAIM**

Rule 13 F.R.Civ.P. applies in adversary proceedings, except that a party sued by a trustee or debtor in possession need not state as a counterclaim any claim that the party has against the debtor, the debtor's property, or the estate, unless the claim arose after the entry of an order for relief. A trustee or debtor in possession who fails to plead a counterclaim through oversight, inadvertence, or excusable neglect, or when justice so requires, may by leave of court amend the pleading, or commence a new adversary proceeding or separate action.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Amended and supplemental pleadings, see rule 7015.
Counterclaims and cross-claims of third-party defendant, see rule 7014.
Default judgment against counterclaimants and cross-claimants, see rule 7055.
Dismissal of counterclaims and cross-claims, see rule 7041.
Separate trial of counterclaims and cross-claims, see rule 7042.

Library References:

C.J.S. Bankruptcy §§ 31 et seq., 160 et seq., 225 et seq., 305 et seq., 375 et seq., 436 et seq.; Federal Civil Procedure §§ 309 et seq.
West's Key No. Digests, Bankruptcy ⅈ2162, 2436, 2680, 2724, 2802, 3066(1), 3117, 3313, 3384, 3593, 3626, 3715(3), 3716.20(9), 3716.30(8); Federal Civil Procedure ⅈ771-786.

Committee Note

Rule 13(h) F.R.Civ.P. refers to Rule 19 F.R.Civ.P. Pursuant to Rule 7002 this reference is to Rule 19 F.R.Civ.P. as incorporated and modified by Rule 7019.

Rule 7014**THIRD-PARTY PRACTICE**

Rule 14 F.R.Civ.P. applies in adversary proceedings.

Cross References

Default judgment against third-party plaintiff, see rule 7055.
Joinder of claims, see rule 7018.
Requisites of pleading, see rule 7008.
Separate trial of third-party claim, see rule 7042.

Library References:

C.J.S. Bankruptcy §§ 27, 90, 160 et seq., 245 et seq., 301 et seq.; Federal Civil Procedure §§ 117 et seq., 318, 343.
West's Key No. Digests, Bankruptcy ⅈ2161, 2438, 2680, 2723, 3066(4.1), 3311, 3385; Federal Civil Procedure ⅈ281-297.

Committee Note

This rule does not purport to deal with questions of jurisdiction. The scope of the jurisdictional grant under 28 U.S.C. § 1471 and whether the doctrines of pendent or ancillary jurisdiction are applicable to adversary proceedings will be determined by the courts.

Rule 14 F.R.Civ.P. refers to Rules 12 and 13 F.R.Civ.P. Pursuant to Rule 7002 those references are to Rules 12 and 13 as incorporated and modified by Rules 7012 and 7013.

Rule 7015**AMENDED AND SUPPLEMENTAL PLEADINGS**

Rule 15 F.R.Civ.P. applies in adversary proceedings.

Cross References

Amendments to pleadings considered at pre-trial conference, see rule 7016.
Applicability of this rule in proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.
Substitution of parties, see rule 7025.

Library References:

C.J.S. Bankruptcy §§ 31, 89, 160 et seq., 225, 230, 305 et seq., 375 et seq., 436 et seq.; Federal Civil Procedure §§ 322 et seq.
West's Key No. Digests, Bankruptcy ⅈ2162, 2435.1, 2680, 2724, 2802, 3066(1), 3117, 3313, 3384, 3593, 3626, 3715(3), 3716.20(9), 3716.30(8); Federal Civil Procedure ⅈ821-853.

Rule 7016**PRE-TRIAL PROCEDURE; FORMULATING ISSUES**

Rule 16 F.R.Civ.P. applies in adversary proceedings.

Cross References

Amended and supplemental pleadings, see rule 7015.

Applicability of this rule in proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Preliminary hearing before trial to determine merit of defenses, see rule 7012.

Library References:

C.J.S. Bankruptcy § 5; Federal Civil Procedure §§ 905 et seq.

West's Key No. Digests, Bankruptcy ⇨2127.1; Federal Civil Procedure ⇨1921-1943.

Rule 7017**PARTIES PLAINTIFF AND DEFENDANT; CAPACITY**

Rule 17 F.R.Civ.P. applies in adversary proceedings, except as provided in Rule 2010(b).

Amended Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Bond requirement for deposit or investment by trustee of estate money, see § 345 of this title.

Filing by trustee of bond in favor of United States as qualification to serve, see § 322 of this title.

Service upon infants or incompetent persons of—

Notice of application for depositions before adversary proceedings or pending appeal, see rule 7027.

Summons and complaint, see rule 7004.

Library References:

C.J.S. Bankruptcy §§ 27, 28, 90, 160 et seq., 225 et seq., 301 et seq., 375 et seq., 436 et seq.

West's Key No. Digests, Bankruptcy ⇨2159.1-2161, 2438, 2680, 2723, 3066(4.1, 5), 3117, 3311, 3385, 3593, 3626, 3715(3), 3716.20(9), 3716.30(8).

Committee Note

Rules 2010(d) and 5008(d), which implement §§ 322 and 345 of the Code, authorize a party in interest to prosecute a claim on the bond of a trustee or depository in the name of the United States.

Committee Note to 1991 Amendments

Reference to Rule 5008(d) is deleted because of the abrogation of Rule 5008.

Rule 7018**JOINDER OF CLAIMS AND REMEDIES**

Rule 18 F.R.Civ.P. applies in adversary proceedings.

Cross References

Joinder of parties—

Misjoinder and non-joinder, see rule 7021.

Permissive joinder, see rule 7020.

Persons needed for just determination, see rule 7019.

Library References:

C.J.S. Bankruptcy §§ 31, 89, 160 et seq., 225, 230, 305 et seq., 375 et seq., 436 et seq.;

Federal Civil Procedure §§ 40, 41.

West's Key No. Digests, Bankruptcy ☞2162, 2435.1, 2680, 2724, 2802, 3066(1), 3117, 3313, 3384, 3593, 3626, 3715(3), 3716.20(9), 3716.30(8); Federal Civil Procedure ☞81-86, 731.

Rule 7019**JOINDER OF PERSONS NEEDED FOR
JUST DETERMINATION**

Rule 19 F.R.Civ.P. applies in adversary proceedings, except that (1) if an entity joined as a party raises the defense that the court lacks jurisdiction over the subject matter and the defense is sustained, the court shall dismiss such entity from the adversary proceeding and (2) if an entity joined as a party properly and timely raises the defense of improper venue, the court shall determine, as provided in 28 U.S.C. § 1412, whether that part of the proceeding involving the joined party shall be transferred to another district, or whether the entire adversary proceeding shall be transferred to another district.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Additional parties for determination of counterclaim or cross-claim, see rule 7013.

Exception to procedural rule on transfer by court of adversary proceeding, see rule 7087.

Parties—

Permissive joinder, see rule 7020.

Substitution of, see rule 7025.

Library References:

C.J.S. Bankruptcy §§ 27, 28, 90, 160 et seq., 225 et seq., 301 et seq., 375 et seq., 436 et seq.; Federal Civil Procedure §§ 32, 137 et seq., 283 et seq., 427 et seq.

West's Key No. Digests, Bankruptcy ☞2159.1-2161, 2438, 2680, 2723, 2800, 3066(4.1, 5), 3117, 3311, 3385, 3593, 3626, 3715(3), 3716.20(9), 3716.30(8); Federal Civil Procedure ☞201-267.

Committee Note

This rule addresses a situation different from that encountered by the district court when its jurisdiction is based on diversity of citizenship under 28 U.S.C. § 1332. Joining of a party whose citizenship is the same as that of an adversary destroys the district court's jurisdiction over the entire civil action but under 28 U.S.C. § 1471 the attempted joinder of such a person would not affect the bankruptcy court's jurisdiction over the original adversary proceeding.

Committee Note to 1987 Amendments

The rule is amended to delete the reference to retention of the adversary proceeding if venue is improper. See 28 U.S.C. § 1412.

Rule 7020**PERMISSIVE JOINDER OF PARTIES**

Rule 20 F.R.Civ.P. applies in adversary proceedings.

Cross References

Additional parties for determination of counterclaim or cross-claim, see rule 7013.

Parties—

Joinder of persons needed for just determination, see rule 7019.

Substitution of, see rule 7025.

Library References:

C.J.S. Bankruptcy §§ 27, 28, 90, 160 et seq., 225 et seq., 301 et seq., 375 et seq., 436 et seq.; Federal Civil Procedure §§ 326 et seq., 487 et seq.

West's Key No. Digests, Bankruptcy Ⓒ2159.1-2161, 2438, 2680, 2723, 2800, 3066(4.1. 5), 3117, 3311, 3385, 3593, 3626, 3715(3), 3716.20(9), 3716.30(8); Federal Civil Procedure Ⓒ241-267.

Rule 7021**MISJOINDER AND NON-JOINDER OF PARTIES**

Rule 21 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in contested matters not otherwise provided for, see rule 9014.

Judgment on counterclaim or cross-claim rendered in separate trials, see rule 7013.

Separate trials—

In furtherance of convenience or to avoid prejudice, see rule 7042.

Of parties joined permissively, see rule 7020.

Library References:

C.J.S. Bankruptcy §§ 27, 90, 160 et seq., 225 et seq., 337 et seq., 436 et seq.; Federal Civil Procedure §§ 171 et seq.

West's Key No. Digests, Bankruptcy Ⓒ2159.1, 2438, 2680, 2723, 3066(4.1. 5), 3117, 3385, 3593, 3626, 3715(3), 3716.20(9), 3716.30(8); Federal Civil Procedure Ⓒ384.1-388.

Rule 7022**INTERPLEADER**

Rule 22(1) F.R.Civ.P. applies in adversary proceedings.

Cross References

Preliminary injunction in interpleader actions, see rule 7065.

Library References:

C.J.S. Bankruptcy § 5; Interpleader §§ 2 et seq.

West's Key No. Digests, Bankruptcy Ⓒ2127.1; Interpleader Ⓒ1 et seq.

Rule 7023

CLASS PROCEEDINGS

Rule 23 F.R.Civ.P. applies in adversary proceedings.

Cross References

Exception of class actions from procedural rule of necessary joinder of parties, see rule 7019.

Library References:

C.J.S. Bankruptcy §§ 27, 90, 160, 187, 337; Federal Civil Procedure §§ 63 et seq., 170.
West's Key No. Digests, Bankruptcy Ⓒ2159.1, 2438, 2723, 3066(4.1), 3385; Federal Civil Procedure Ⓒ161–189.

Rule 7023.1

DERIVATIVE PROCEEDINGS BY SHAREHOLDERS

Rule 23.1 F.R.Civ.P. applies in adversary proceedings.

Cross References

Actions relating to unincorporated associations, see rule 7023.2.

Library References:

C.J.S. Bankruptcy §§ 27, 187; Corporations §§ 397 et seq.; Federal Civil Procedure §§ 82 et seq., 139, 149, 298.
West's Key No. Digests, Bankruptcy Ⓒ2159.1, 3066(5); Corporations Ⓒ202–214; Federal Civil Procedure Ⓒ187.

Rule 7023.2

ADVERSARY PROCEEDINGS RELATING TO
UNINCORPORATED ASSOCIATIONS

Rule 23.2 F.R.Civ.P. applies in adversary proceedings.

Cross References

Capacity of unincorporated association to sue or be sued, see rule 7017.
Derivative actions by shareholders, see rule 7023.1.

Library References:

C.J.S. Bankruptcy § 27; Federal Civil Procedure §§ 49, 76 et seq.
West's Key No. Digests, Bankruptcy Ⓒ2159.1; Federal Civil Procedure Ⓒ115, 186.5.

Rule 7024

INTERVENTION

Rule 24 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.
Intervention in case under this title, see rule 2018.

Library References:

C.J.S. Bankruptcy §§ 28, 38; Federal Civil Procedure §§ 128 et seq.

West's Key No. Digests, Bankruptcy ⅈ2160, 2204.1-2206; Federal Civil Procedure ⅈ311-345.

Committee Note

A person may seek to intervene in the case under the Code or in an adversary proceeding relating to the case under the Code. Intervention in a case under the Code is governed by Rule 2018 and intervention in an adversary proceeding is governed by this rule. Intervention in a case and intervention in an adversary proceeding must be sought separately.

Rule 7025**SUBSTITUTION OF PARTIES**

Subject to the provisions of Rule 2012, Rule 25 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in—

Contested matters not otherwise provided for, see rule 9014.

Proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Right to use depositions previously taken, see rule 7026.

Library References:

C.J.S. Bankruptcy §§ 27, 90, 160 et seq., 225 et seq., 337 et seq., 436 et seq.; Federal Civil Procedure §§ 156 et seq.

West's Key No. Digests, Bankruptcy ⅈ2159.1, 2438, 2680, 2723, 2800, 3001, 3007, 3066(4.1, 5), 3117, 3137, 3385, 3593, 3623.1-3626, 3715(3), 3716.20(9), 3716.30(8); Federal Civil Procedure ⅈ351-366.

Committee Note

Rule 25 F.R.Civ.P. refers to Rule 4 F.R.Civ.P. Pursuant to Rule 7002 that reference is to Rule 4 as incorporated and modified by Rule 7004.

Rule 7026**GENERAL PROVISIONS GOVERNING DISCOVERY**

Rule 26 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in—

Contested matters not otherwise provided for, see rule 9014.

Proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Failure to make discovery; sanctions, see rule 7037.

Subpoena for taking depositions; place of examination, see rule 9016.

Library References:

C.J.S. Bankruptcy § 204; Federal Civil Procedure §§ 526 et seq.

West's Key No. Digests, Bankruptcy ⅈ3040.1-3048; Federal Civil Procedure ⅈ1261 et seq.

Rule 7027**DEPOSITIONS BEFORE ADVERSARY PROCEEDINGS
OR PENDING APPEAL**

Rule 27 F.R.Civ.P. applies to adversary proceedings.

Cross References

Applicability of this rule in contested matters not otherwise provided for, see rule 9014.

Library References:

C.J.S. Bankruptcy § 204; Federal Civil Procedure §§ 544 et seq.
West's Key No. Digests, Bankruptcy ⅈ3040.1-3048; Federal Civil Procedure ⅈ1291-1299.

Committee Note

Rule 27(a)(2) F.R.Civ.P. refers to Rule 4 F.R.Civ.P. Pursuant to Rule 7002 the reference is to Rule 4 F.R.Civ.P. as incorporated and modified by Rule 7004.

Rule 7028**PERSONS BEFORE WHOM DEPOSITIONS
MAY BE TAKEN**

Rule 28 F.R.Civ.P. applies in adversary proceedings.

Cross References

Affirmations, see rule 9012.

Applicability of this rule in—

Contested matters not otherwise provided for, see rule 9014.

Proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Library References:

C.J.S. Bankruptcy § 204; Federal Civil Procedure §§ 593-596.
West's Key No. Digests, Bankruptcy ⅈ3040.1; Federal Civil Procedure ⅈ1371-1375.

Rule 7029**STIPULATIONS REGARDING DISCOVERY PROCEDURE**

Rule 29 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in—

Contested matters not otherwise provided for, see rule 9014.

Proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Library References:

C.J.S. Bankruptcy § 204; Federal Civil Procedure § 566.
West's Key No. Digests, Bankruptcy ⅈ3040.1, 3041; Federal Civil Procedure ⅈ1326.

Rule 7030**DEPOSITIONS UPON ORAL EXAMINATION**

Rule 30 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in--

Contested matters not otherwise provided for, see rule 9014.

Proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Failure to make discovery; sanctions, see rule 7037.

Subpoena for taking depositions; place of examination, see rule 9016.

Library References:

C.J.S. Bankruptcy § 204; Federal Civil Procedure §§ 548 et seq., 600 et seq.

West's Key No. Digests. Bankruptcy ⅈ3040.1-3048; Federal Civil Procedure ⅈ1311-1456.

Committee Note

Rule 30 F.R.Civ.P. refers to Rule 4 F.R.Civ.P. Pursuant to Rule 7002 that reference is a reference to Rule 4 F.R.Civ.P. as incorporated and modified by Rule 7004.

Rule 7031**DEPOSITION UPON WRITTEN QUESTIONS**

Rule 31 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in--

Contested matters not otherwise provided for, see rule 9014.

Proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Failure to make discovery; sanctions, see rule 7037.

Library References:

C.J.S. Bankruptcy § 204; Federal Civil Procedure §§ 591, 592.

West's Key No. Digests. Bankruptcy ⅈ3040.1-3048; Federal Civil Procedure ⅈ1369.1, 1370.

Rule 7032**USE OF DEPOSITIONS IN ADVERSARY PROCEEDINGS**

Rule 32 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in--

Contested matters not otherwise provided for, see rule 9014.

Proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Library References:

C.J.S. Bankruptcy § 204; Federal Civil Procedure §§ 633 et seq.
West's Key No. Digests, Bankruptcy ⅈ3048; Federal Civil Procedure ⅈ1432.1-1441.

Rule 7033**INTERROGATORIES TO PARTIES**

Rule 33 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in—

Contested matters not otherwise provided for, see rule 9014.

Proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Failure to make discovery; sanctions, see rule 7037.

Library References:

C.J.S. Bankruptcy § 204; Federal Civil Procedure §§ 645 et seq.
West's Key No. Digests, Bankruptcy ⅈ3040.1-3048; Federal Civil Procedure ⅈ1471-1491.

Rule 7034**PRODUCTION OF DOCUMENTS AND THINGS
AND ENTRY UPON LAND FOR INSPECTION
AND OTHER PURPOSES**

Rule 34 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in—

Contested matters not otherwise provided for, see rule 9014.

Proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Failure to make discovery; sanctions, see rule 7037.

Subpoena for production of documentary evidence, see rule 9016.

Library References:

C.J.S. Bankruptcy § 204; Federal Civil Procedure §§ 696 et seq.
West's Key No. Digests, Bankruptcy ⅈ3044; Federal Civil Procedure ⅈ1551-1640.

Rule 7035**PHYSICAL AND MENTAL EXAMINATION OF PERSONS**

Rule 35 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in—

Contested matters not otherwise provided for, see rule 9014.

Proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Failure to make discovery; sanctions, see rule 7037.

Library References:

C.J.S. Bankruptcy § 204; Federal Civil Procedure §§ 752-755.

West's Key No. Digests, Bankruptcy Ⓒ3040.1-3048; Federal Civil Procedure Ⓒ1651-1664.

Rule 7036**REQUESTS FOR ADMISSION**

Rule 36 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in—

Contested matters not otherwise provided for, see rule 9014.

Proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Pre-trial conference to obtain admissions of facts and documents, see rule 7016.

Library References:

C.J.S. Bankruptcy § 204; Federal Civil Procedure §§ 756 et seq.

West's Key No. Digests, Bankruptcy Ⓒ3040.1-3048; Federal Civil Procedure Ⓒ1671-1686.

Rule 7037**FAILURE TO MAKE DISCOVERY: SANCTIONS**

Rule 37 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in—

Contested matters not otherwise provided for, see rule 9014.

Proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Library References:

C.J.S. Bankruptcy § 204; Federal Civil Procedure §§ 744 et seq.

West's Key No. Digests, Bankruptcy Ⓒ3040.1-3048; Federal Civil Procedure Ⓒ1631-1640.

Rule 7040**ASSIGNMENT OF CASES FOR TRIAL**

Rule 40 F.R.Civ.P. applies in adversary proceedings.

Cross References

Local bankruptcy rules on practice and procedure not inconsistent with these rules, see rule 9029.

Library References:

C.J.S. Bankruptcy § 5; Federal Civil Procedure § 934.

West's Key No. Digests, Bankruptcy Ⓒ2127.1; Federal Civil Procedure Ⓒ1993.1, 1994.

Rule 7041

DISMISSAL OF ADVERSARY PROCEEDINGS

Rule 41 F.R.Civ.P. applies in adversary proceedings, except that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper.

Amended Apr. 30, 1991. eff. Aug. 1, 1991.

Cross References

Applicability of this rule in contested matters not otherwise provided for, see rule 9014.

Findings by court necessary when judgment rendered on merits of motion to dismiss after trial on facts, see rule 7052.

Sanction for failure to attend deposition, to answer interrogatories, or to respond to inspection request, see rule 7037.

Library References:

C.J.S. Bankruptcy §§ 31, 311 et seq.; Federal Civil Procedure § 775.

West's Key No. Digests, Bankruptcy ⅈ2162, 3318.1, 3387.1; Federal Civil Procedure ⅈ1691 et seq.

Committee Note

Dismissal of a complaint objecting to a discharge raises special concerns because the plaintiff may have been induced to dismiss by an advantage given or promised by the debtor or someone acting in his interest. Some courts by local rule or order have required the debtor and his attorney or the plaintiff to file an affidavit that nothing has been promised to the plaintiff in consideration of the withdrawal of the objection. By specifically authorizing the court to impose conditions in the order of dismissal this rule permits the continuation of this salutary practice.

Rule 41 F.R.Civ.P. refers to Rule 19 F.R.Civ.P. Pursuant to Rule 7002 that reference is to Rule 19 F.R.Civ.P. as incorporated and modified by Rule 7019.

Committee Note to 1991 Amendments

The United States trustee has standing to object to the debtor's discharge pursuant to § 727(c) and may have refrained from commencing an adversary proceeding objecting to discharge within the time limits provided in Rule 4004 only because another party commenced such a proceeding. The United States trustee may oppose dismissal of the original proceeding.

The rule is also amended to clarify that the court may direct that other persons receive notice of a plaintiff's motion to dismiss a complaint objecting to discharge.

Rule 7042**CONSOLIDATION OF ADVERSARY PROCEEDINGS;
SEPARATE TRIALS**

Rule 42 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in contested matters not otherwise provided for, see rule 9014.

Separate trials—

Joinder of party against whom no claim exists, see rule 7020.

Separate judgments rendered on counterclaim or cross-claim, see rule 7013.

Library References:

C.J.S. Bankruptcy §§ 23, 26, 92, 163, 283, 311 et seq.; Federal Civil Procedure §§ 916–918.

West's Key No. Digests, Bankruptcy Ⓒ2084.1–2085; 2156, 2440, 2728, 2929, 3318.1, 3387.1; Federal Civil Procedure Ⓒ1953–1965.

Rule 7052**FINDINGS BY THE COURT**

Rule 52 F.R.Civ.P. applies in adversary proceedings.

Cross References

Amendment of findings—

On motion for new trial, see rule 9023.

Stay of proceedings to enforce judgment pending disposition of motion to amend, see rule 7062.

Applicability of this rule in—

Contested matters not otherwise provided for, see rule 9014.

Proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Effect of motion to amend or to add fact findings on time for appeal, see rule 8002.

Enlargement of ten-day period for motion to amend findings of court not permitted, see rule 9006.

Library References:

C.J.S. Bankruptcy §§ 35, 94, 163, 311 et seq.; Federal Civil Procedure §§ 1036 et seq.

West's Key No. Digests, Bankruptcy Ⓒ2164.1, 2442, 2729, 3318.1, 3387.1; Federal Civil Procedure Ⓒ2261–2296.

Committee Note

Rule 52(a) F.R.Civ.P. refers to Rule 12 F.R.Civ.P. Pursuant to Rule 7002 this reference is to Rule 12 F.R.Civ.P. as incorporated and modified by Rule 7012.

Rule 7054

JUDGMENTS; COSTS

(a) Judgments. Rule 54(a)–(c) F.R.Civ.P. applies in adversary proceedings.

(b) Costs. The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides. Costs against the United States, its officers and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice; on motion served within five days thereafter, the action of the clerk may be reviewed by the court.

Cross References

Amendment or alteration—

Stay of proceedings pending disposition of motion for, see rule 7062.

Time for service of motion, see rule 9023.

Applicability of this rule in—

Contested matters not otherwise provided for, see rule 9014.

Proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Entry of judgment, district court record of judgment, see rule 9021.

Relief from judgment or order, see rule 9024.

Library References:

C.J.S. Bankruptcy §§ 36 et seq., 94 et seq., 163, 283, 286, 347, 348, 470; Federal Civil Procedure §§ 65 et seq.

West's Key No. Digests, Bankruptcy ⅈ2164.1, 2181-2191, 2442, 2443, 2729, 2932, 2933, 3318.1-3322, 3387.1, 3388; Federal Civil Procedure ⅈ2391 et seq.

Rule 7055

DEFAULT

Rule 55 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in contested matters not otherwise provided for, see rule 9014.

Demand for judgment, see rule 7054.

Library References:

C.J.S. Bankruptcy §§ 35, 283, 347; Federal Civil Procedure §§ 1122 et seq.

West's Key No. Digests, Bankruptcy ⅈ2165, 2930, 3387.1; Federal Civil Procedure ⅈ2411-2455.

Rule 7056

SUMMARY JUDGMENT

Rule 56 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in—

Contested matters, not otherwise provided for, see rule 9014.

Proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Library References:

C.J.S. Bankruptcy § 35; Federal Civil Procedure §§ 1135, 1184.

West's Key No. Digests, Bankruptcy ⅈ2164.1; Federal Civil Procedure ⅈ2461-2559.

Rule 7062**STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT**

Rule 62 F.R.Civ.P. applies in adversary proceedings.

Amended Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 29, 1999, eff. Dec. 1, 1999.

Cross References

Applicability of this rule in—

Contested matters not otherwise provided for, see rule 9014.

Proceedings on contested involuntary petition and to vacate order for relief, see rule 1018.

Effect of entry of judgment on availability of relief under this rule, see rule 9021.

Power of court to suspend or to order continuation of other proceedings pending appeal, see rule 8005.

Security: proceedings against sureties, see rule 9025.

Stay of new proceedings until payment of costs of previously dismissed action, see rule 7041.

Library References:

C.J.S. Bankruptcy §§ 94, 200 et seq., 463, 464; Federal Civil Procedure § 1263; Federal Courts §§ 294(1) et seq.

West's Key No. Digests, Bankruptcy ⅈ2442, 3038, 3070, 3084, 3117, 3776.5(1-5); Federal Civil Procedure ⅈ2700; Federal Courts ⅈ684-687.

Committee Note

The additional exceptions set forth in this rule make applicable to those matters the consequences contained in Rule 62(c) and (d) with respect to orders in actions for injunctions.

Committee Note to 1991 Amendments

This rule is amended to include as additional exceptions to Rule 62(a) an order granting relief from the automatic stay of actions against codebtors provided by § 1201 of the Code, the sale or lease of property of the estate under § 363, and the assumption or assignment of an executory contract under § 365.

Committee Note to 1999 Amendments

The additional exceptions to Rule 62(a) consist of orders that are issued in contested matters. These exceptions are deleted from this rule because of the amendment to Rule 9014 that renders this rule inapplicable in contested matters unless the court orders otherwise. See also the amendments to Rules 3020, 3021, 4001, 6004, and 6006 that delay the implementation of certain types of orders for a period of ten days unless the court otherwise directs.

Rule 7064**SEIZURE OF PERSON OR PROPERTY**

Rule 64 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in contested matters not otherwise provided for, see rule 9014.

Writ of attachment or sequestration issued against property ordered by judgment to be conveyed, see rule 7070.

Library References:

C.J.S. Federal Civil Procedure §§ 233 et seq.

West's Key No. Digests, Federal Civil Procedure ⌋581-590.

Rule 7065**INJUNCTIONS**

Rule 65 F.R.Civ.P. applies in adversary proceedings, except that a temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c).

Cross References

Injunction pending appeal of interlocutory or final judgment concerning injunction, see rule 7062.

Security; proceedings against sureties, see rule 9025.

Signing and verification of papers, see rule 9011.

Library References:

C.J.S. Bankruptcy § 99; Federal Courts §§ 294(1) et seq.; Injunctions §§ 4 et seq., 60 et seq., 114 et seq., 166 et seq., 217 et seq.

West's Key No. Digests, Bankruptcy ⌋2374; Federal Courts ⌋685; Injunction ⌋132-159½.

Rule 7067**DEPOSIT IN COURT**

Rule 67 F.R.Civ.P. applies in adversary proceedings.

Library References:

C.J.S. Deposits in Court §§ 1 et seq.

West's Key No. Digests, Deposits in Court ⌋1 et seq.

Rule 7068**OFFER OF JUDGMENT**

Rule 68 F.R.Civ.P. applies in adversary proceedings.

Library References:

C.J.S. Bankruptcy § 36; Federal Civil Procedure §§ 1117, 1236, 1276.

West's Key No. Digests, Bankruptcy ⌋2181, 2182.1; Federal Civil Procedure ⌋2397.1-2397.6, 2725.

Rule 7069**EXECUTION**

Rule 69 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in contested matters not otherwise provided for, see rule 9014.
Effect of entry of judgment on availability of process to enforce judgment, see rule 9021.
Writ of execution to enforce judgment to deliver possession of property, see rule 7070.

Library References:

C.J.S. Federal Civil Procedure §§ 1254 et seq.
West's Key No. Digests, Federal Civil Procedure ⇨2691-2714.

Rule 7070**JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE**

Rule 70 F.R.Civ.P. applies in adversary proceedings and the court may enter a judgment divesting the title of any party and vesting title in others whenever the real or personal property involved is within the jurisdiction of the court.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Effect of entry of judgment on availability of relief under this rule, see rule 9021.

Library References:

C.J.S. Bankruptcy §§ 5, 9; Federal Civil Procedure §§ 1258, 1260.
West's Key No. Digests, Bankruptcy ⇨2124.1; Federal Civil Procedure ⇨2695.

Committee Note to 1987 Amendments

The reference to court is used in the amendment because the district court may preside over an adversary proceeding.

Rule 7071**PROCESS IN BEHALF OF AND AGAINST
PERSONS NOT PARTIES**

Rule 71 F.R.Civ.P. applies in adversary proceedings.

Cross References

Applicability of this rule in contested matters not otherwise provided for, see rule 9014.

Library References:

C.J.S. Federal Civil Procedure § 1107.
West's Key No. Digests, Federal Civil Procedure ⇨2394.

Rule 7087**TRANSFER OF ADVERSARY PROCEEDING**

On motion and after a hearing, the court may transfer an adversary proceeding or any part thereof to another district pursuant to 28 U.S.C. § 1412, except as provided in Rule 7019(2).

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Library References:

C.J.S. Bankruptcy §§ 23–25.

West's Key No. Digests, Bankruptcy ☞2083–2091.

Committee Note to 1987 Amendments

The reference to the venue section of title 28 is amended to conform to the 1984 amendments to title 28.

PART VIII

APPEALS TO DISTRICT COURT OR BANKRUPTCY APPELLATE PANEL

Rule

- 8001. Manner of Taking Appeal; Voluntary Dismissal
- 8002. Time for Filing Notice of Appeal
- 8003. Leave to Appeal
- 8004. Service of the Notice of Appeal
- 8005. Stay Pending Appeal
- 8006. Record and Issues on Appeal
- 8007. Completion and Transmission of the Record; Docketing of the Appeal
- 8008. Filing and Service
- 8009. Briefs and Appendix; Filing and Service
- 8010. Form of Briefs; Length
- 8011. Motions
- 8012. Oral Argument
- 8013. Disposition of Appeal; Weight Accorded Bankruptcy Judge's Findings of Fact
- 8014. Costs
- 8015. Motion for Rehearing
- 8016. Duties of Clerk of District Court and Bankruptcy Appellate Panel
- 8017. Stay of Judgment of District Court or Bankruptcy Appellate Panel
- 8018. Rules by Circuit Councils and District Courts; Procedure When There Is No
Controlling Law
- 8019. Suspension of Rules in Part VIII
- 8020. Damages and Costs for Frivolous Appeal

Rule 8001

MANNER OF TAKING APPEAL; VOLUNTARY DISMISSAL

(a) Appeal as of Right; How Taken. An appeal from a judgment, order, or decree of a bankruptcy judge to a district court or bankruptcy appellate panel as permitted by 28 U.S.C. § 158(a)(1) or (a)(2) shall be taken by filing a notice of appeal with the clerk within the time allowed by Rule 8002. An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal. The notice of appeal shall (1) conform substantially to the appropriate Official Form, (2) contain the names of all parties to the judgment, order, or decree appealed from and the names, addresses and telephone numbers of their respective attorneys, and (3) be accompanied by the prescribed fee. Each appellant shall file a sufficient number of copies of the notice of appeal to enable the clerk to comply promptly with Rule 8004.

(b) Appeal by Leave; How Taken. An appeal from an interlocutory judgment, order or decree of a bankruptcy judge as permitted by 28 U.S.C. § 158(a)(3) shall be taken by filing a notice of appeal, as prescribed in subdivision (a) of this rule, accompanied by a motion for leave to appeal prepared in accordance with Rule 8003 and with proof of service in accordance with Rule 8008.

(c) Voluntary Dismissal.

(1) *Before Docketing.* If an appeal has not been docketed, the appeal may be dismissed by the bankruptcy judge on the filing of a stipulation for dismissal signed by all the parties, or on motion and notice by the appellant.

(2) *After Docketing.* If an appeal has been docketed and the parties to the appeal sign and file with the clerk of the district court or the clerk of the bankruptcy appellate panel an agreement that the appeal be dismissed and pay any court costs or fees that may be due, the clerk of the district court or the clerk of the bankruptcy appellate panel shall enter an order dismissing the appeal. An appeal may also be dismissed on motion of the appellant on terms and conditions fixed by the district court or bankruptcy appellate panel.

(d) [Abrogated]

(e) Election to Have Appeal Heard by District Court Instead of Bankruptcy Appellate Panel. An election to have an appeal heard by the district court under 28 U.S.C. § 158(c)(1) may be made only by a statement of election contained in a separate writing filed within the time prescribed by 28 U.S.C. § 158(c)(1).

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 11, 1997, eff. Dec. 1, 1997.

Cross References

Effect of clerk's retention and indexing of judgment on appealability and proceedings on appeal, see rule 9021.

Suspension of this rule, see rule 8019.

Time to file and to serve items of record and statement of issues on appeal, see rule 8006.

Library References:

C.J.S. Bankruptcy §§ 458 et seq.

West's Key No. Digests, Bankruptcy ☞3771-3773, 3778.

Committee Note

These rules in Part VIII apply only to appeals to the district courts or bankruptcy appellate panels. Subsequent appeals to the courts of appeals, or direct appeals by agreement of the parties under 28 U.S.C. § 1293(b), are governed by Federal Rules of Appellate Procedure.

Subdivisions (a) and (b) require that a notice of appeal be filed whenever a litigant seeks to secure appellate review by the district court or bankruptcy appellate panel. An appeal from an interlocutory order which will be heard only if leave is granted under 28 U.S.C. §§ 1334(b) or 1482(b) is taken by filing a notice of appeal accompanied by a motion for leave to appeal which complies with the requirements set forth in Rule 8003. Rule 8003 also governs other aspects of interlocutory appeals.

Subdivision (c) is an adaptation of Rule 42 F.R.App.P.

Subdivision (d) deals with the situation in which an appellant perfects an appeal to the district court or a bankruptcy appellate panel and also a direct appeal pursuant to 28 U.S.C. § 1293(b) to the court of appeals. This subdivision provides that once the appeal to the court of appeals is taken, a notice of appeal to the district court or bankruptcy appellate panel shall be dismissed and, if the first appeal is to the district court or bankruptcy appellate panel, the first appeal shall be dismissed. Paragraph (3) gives an

appellant or cross appellant an opportunity to file an appeal to the district court or bankruptcy appellate panel if the court of appeals dismisses the direct appeal because the judgment, order, or decree appealed from is not final. Since the court of appeals has determined the judgment, order, or decree is not final, the new appeal is an appeal for which leave is necessary.

Committee Note to 1987 Amendments

Subdivisions (a) and (b) are amended to conform to the 1984 amendments.

Subdivision (d) is abrogated because there is no direct appeal to the court of appeals under 28 U.S.C. § 158, as enacted by the 1984 amendments.

Subdivision (e) is new. Section 158(b)(1) of title 28 authorizes the circuit councils to establish bankruptcy appellate panels. Appeals may not be heard by these panels unless the district court authorizes the referral and all parties to the appeal consent. This rule requires that the parties consent to such an appeal; however, the method of consenting to an appeal may be the subject of a rule promulgated by a circuit council under Rule 8018.

Committee Note to 1991 Amendments

Reference to the Official Form number is deleted in anticipation of future revision and renumbering of the Official Forms.

Committee Note to 1997 Amendments

This rule is amended to conform to the Bankruptcy Reform Act of 1994 which amended 28 U.S.C. § 158. As amended, a party may—without obtaining leave of the court—appeal from an interlocutory order or decree of the bankruptcy court issued under § 1121(d) of the Code increasing or reducing the time periods referred to in § 1121.

Subdivision (e) is amended to provide the procedure for electing under 28 U.S.C. § 158(c)(1) to have an appeal heard by the district court instead of the bankruptcy appellate panel service. This subdivision is applicable only if a bankruptcy appellate panel service is authorized under 28 U.S.C. § 158(b) to hear the appeal.

Rule 8002

TIME FOR FILING NOTICE OF APPEAL

(a) Ten-day Period. The notice of appeal shall be filed with the clerk within 10 days of the date of the entry of the judgment, order, or decree appealed from. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 10 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires. A notice of appeal filed after the announcement of a decision or order but before entry of the judgment, order, or decree shall be treated as filed after such entry and on the day thereof. If a notice of appeal is mistakenly filed with the district court or the bankruptcy appellate panel, the clerk of the district court or the clerk of the bankruptcy appellate panel shall note thereon the date on which it was received and transmit it to the clerk and it shall be deemed filed with the clerk on the date so noted.

(b) Effect of Motion on Time for Appeal. If any party makes a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion:

(1) to amend or make additional findings of fact under Rule 7052, whether or not granting the motion would alter the judgment;

(2) to alter or amend the judgment under Rule 9023;

(3) for a new trial under Rule 9023; or

(4) for relief under Rule 9024 if the motion is filed no later than 10 days after the entry of judgment. A notice of appeal filed after announcement or entry of the judgment, order, or decree but before disposition of any of the above motions is ineffective to appeal from the judgment, order, or decree, or part thereof, specified in the notice of appeal, until the entry of the order disposing of the last such motion outstanding. Appellate review of an order disposing of any of the above motions requires the party, in compliance with Rule 8001, to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment, order, or decree shall file a notice, or an amended notice, of appeal within the time prescribed by this Rule 8002 measured from the entry of the order disposing of the last such motion outstanding. No additional fees will be required for filing an amended notice.

(c) Extension of Time for Appeal.

(1) The bankruptcy judge may extend the time for filing the notice of appeal by any party, unless the judgment, order, or decree appealed from:

(A) grants relief from an automatic stay under § 362, § 922, § 1201, or § 1301;

(B) authorizes the sale or lease of property or the use of cash collateral under § 363;

(C) authorizes the obtaining of credit under § 364;

(D) authorizes the assumption or assignment of an executory contract or unexpired lease under § 365;

(E) approves a disclosure statement under § 1125; or

(F) confirms a plan under § 943, § 1129, § 1225, or § 1325 of the Code.

(2) A request to extend the time for filing a notice of appeal must be made by written motion filed before the time for filing a notice of appeal has expired, except that such a motion filed not later than 20 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect. An extension of time for filing a notice of appeal may not exceed 20 days from the expiration of the time for filing a notice of appeal otherwise prescribed by this rule or 10 days from the date of entry of the order granting the motion, whichever is later.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 29, 1994, eff. Aug. 1, 1994; Apr. 11, 1997, eff. Dec. 1, 1997.

Cross References

Appeal as of right, how taken, see rule 8001.

Filing notice of appeal, ten-day period—

Enlargement permitted as limited in this rule, see rule 9006.

Reduction not permitted, see rule 9006.

Lack of notice of judgment has no effect on time to appeal nor relief from failure to appeal except as permitted in this rule, see rule 9022.

Suspension of this rule, see rule 8019.

Library References:

C.J.S. Bankruptcy § 460.

West's Key No. Digests, Bankruptcy Ⓒ3774.1, 3775.

Official Forms

Notice of appeal to district court or bankruptcy appellate panel from judgment or other final order of bankruptcy court, see form 17.

Committee Note

This rule is an adaptation of Rule 4(a) F.R.App.P. The time to appeal from a judgment, order, or decree of a bankruptcy judge is 10 days, rather than 30 days provided for in the civil practice. The shortened time is specified in order to obtain prompt appellate review, often important to the administration of a case under the Code. If a timely notice of appeal is filed, other parties have an additional 10 days within which to file a notice of appeal. A notice of appeal filed within the additional 10 day period by an appellee is a cross appeal, but there is a separate appeal if a non-appellee files a notice of appeal within that 10 day period. The district courts and bankruptcy appellate panels have inherent authority to consolidate appeals.

Subdivision (b) is essentially the same as Rule 4(a)(4) of the F.R.App.P.

Subdivision (c) is similar to former Bankruptcy Rule 802(c). To expedite the disposition of appeals the maximum extension of time is 20 days instead of the 30 days provided by Rule 4(a)(5) of the F.R.App.P. Subject to the exceptions set forth in subdivision (c), the court may extend the time for taking an appeal when a motion for extension is filed after the expiration of the original 10 day period but no later than 20 days after the expiration of the original 10 day period. Orders of the bankruptcy court relating to the sale of property, extension of credit, confirmation of a plan, dismissal or conversion of the case, and approval of the disclosure statement are of such significance to the administration of the case, the parties in interest, and third parties that this subdivision requires that either an appeal or a motion for extension be filed within the original 10 day period.

If a timely notice of appeal is not filed, no appeal may be taken later. Former Bankruptcy Rule 803, which provided that a referee's judgment became final when the appeal period expired, has been omitted as unnecessary.

Committee Note to 1991 Amendments

Subdivision (a) is amended to conform to F.R.App.P. 4(a)(2) which is designed to avoid the loss of the right to appeal when a notice of appeal is filed prematurely.

Subdivision (b)(1) is deleted because Rule 9015 was abrogated in 1987.

Committee Note to 1994 Amendments

These amendments are intended to conform to the 1993 amendments to F.R.App.P. 4(a)(4) and 6(b)(2)(i).

This rule as amended provides that a notice of appeal filed before the disposition of a specified postjudgment motion will become effective upon disposition of the motion. A notice filed before the filing of one of the specified motions or after the filing of a motion but before disposition of the motion is, in effect, suspended until the motion is disposed of, whereupon, the previously filed notice effectively places jurisdiction in the district court or bankruptcy appellate panel.

Because a notice of appeal will ripen into an effective appeal upon disposition of a postjudgment motion, in some instances there will be an appeal from a judgment that has been altered substantially because the motion was granted in whole or in part. The appeal may be dismissed for want of prosecution when the appellant fails to meet the briefing schedule. But, the appellee may also move to strike the appeal. When responding to such a motion, the appellant would have an opportunity to state that, even though some relief sought in a postjudgment motion was granted, the appellant still plans to pursue the appeal. Because the appellant's response would provide the appellee with sufficient notice of the appellant's intentions, the rule does not require an additional notice of appeal in that situation.

The amendment provides that a notice of appeal filed before the disposition of a postjudgment tolling motion is sufficient to bring the judgment, order, or decree specified in the original notice of appeal to the district court or bankruptcy appellate panel. If the judgment is altered upon disposition of a postjudgment motion, however, and if a party who has previously filed a notice of appeal wishes to appeal from the disposition of the motion, the party must amend the notice to so indicate. When a party files an amended notice, no additional fees are required because the notice is an amendment of the original and not a new notice of appeal.

Subdivision (b) is also amended to include, among motions that extend the time for filing a notice of appeal, a motion under Rule 9024 that is filed within 10 days after entry of judgment. The addition of this motion conforms to a similar amendment to F.R.App.P. 4(a)(4) made in 1993, except that a Rule 9024 motion does not toll the time to appeal unless it is filed within the 10-day period. The reason for providing that the motion extends the time to appeal only if it is filed within the 10-day period is to enable the court and the parties in interest to determine solely from the court records whether the time to appeal has been extended by a motion for relief under Rule 9024.

Committee Note to 1997 Amendments

Subdivision (c) is amended to provide that a request for an extension of time to file a notice of appeal must be *filed* within the applicable time period. This amendment will avoid uncertainty as to whether the mailing of a motion or an oral request in court is sufficient to request an extension of time, and will enable the court and the parties in interest to determine solely from the court records whether a timely request for an extension has been made.

The amendments also give the court discretion to permit a party to file a notice of appeal more than 20 days after expiration of the time to appeal otherwise prescribed, but only if the motion was timely filed within a period not exceeding 10 days after entry of the order extending the time. This

amendment is designed to protect parties that file timely motions to extend the time to appeal from the harshness of the present rule as demonstrated in *In re Mouradick*, 113 F.3d 326 (9th Cir. 1994), where the court held that a notice of appeal filed within the 3-day period expressly prescribed by an order granting a timely motion for an extension of time did not confer jurisdiction on the appellate court because the notice of appeal was not filed within the 20-day period specified in subdivision (c).

The subdivision is amended further to prohibit any extension of time to file a notice of appeal—even if the motion for an extension is filed before the expiration of the original time to appeal—if the order appealed from grants relief from the automatic stay, authorizes the sale or lease of property, use of cash collateral, obtaining of credit, or assumption or assignment of an executory contract or unexpired lease under § 365, or approves a disclosure statement or confirms a plan. These types of orders are often relied upon immediately after they are entered and should not be reviewable on appeal after the expiration of the original appeal period under Rule 8002(a) and (b).

Rule 8003

LEAVE TO APPEAL

(a) Content of Motion; Answer. A motion for leave to appeal under 28 U.S.C. § 158(a) shall contain: (1) a statement of the facts necessary to an understanding of the questions to be presented by the appeal; (2) a statement of those questions and of the relief sought; (3) a statement of the reasons why an appeal should be granted; and (4) a copy of the judgment, order, or decree complained of and of any opinion or memorandum relating thereto. Within 10 days after service of the motion, an adverse party may file with the clerk an answer in opposition.

(b) Transmittal; Determination of Motion. The clerk shall transmit the notice of appeal, the motion for leave to appeal and any answer thereto to the clerk of the district court or the clerk of the bankruptcy appellate panel as soon as all parties have filed answers or the time for filing an answer has expired. The motion and answer shall be submitted without oral argument unless otherwise ordered.

(c) Appeal Improperly Taken Regarded as a Motion for Leave to Appeal. If a required motion for leave to appeal is not filed, but a notice of appeal is timely filed, the district court or bankruptcy appellate panel may grant leave to appeal or direct that a motion for leave to appeal be filed. The district court or the bankruptcy appellate panel may also deny leave to appeal but in so doing shall consider the notice of appeal as a motion for leave to appeal. Unless an order directing that a motion for leave to appeal be filed provides otherwise, the motion shall be filed within 10 days of entry of the order.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Appeal—

After dismissal of direct appeal by court of appeals, when taken, see rule 8001.

By leave, how taken, see rule 8001.

Effect of clerk's retention and indexing of judgment on appealability and proceedings on appeal, see rule 9021.

Library References:

C.J.S. Bankruptcy § 459.

West's Key No. Digests, Bankruptcy Ⓒ3772.

Committee Note

Subdivisions (a) and (b) of this rule are derived from Rules 5 and 6 F.R.App.P. The motion for leave to appeal is addressed to the district court or the bankruptcy appellate panel, although filed with the clerk of the bankruptcy court.

Subdivision (c) provides that if a party mistakenly believes the order appealed from is final and files only a notice of appeal, the appeal is not automatically dismissed. The district court or bankruptcy appellate panel has the options to direct that a motion be filed, to decide exclusively on the papers already filed to grant leave to appeal, or to deny leave to appeal. Cf. 28 U.S.C. § 2103.

Rule 8004**SERVICE OF THE NOTICE OF APPEAL**

The clerk shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant or, if a party is not represented by counsel, to the party's last known address. Failure to serve notice shall not affect the validity of the appeal. The clerk shall note on each copy served the date of the filing of the notice of appeal and shall note in the docket the names of the parties to whom copies are mailed and the date of the mailing. The clerk shall forthwith transmit to the United States trustee a copy of the notice of appeal, but failure to transmit such notice shall not affect the validity of the appeal.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Filing by appellant of sufficient number of copies of notice of appeal, see rule 8001.

Library References:

C.J.S. Bankruptcy § 460.

West's Key No. Digests, Bankruptcy Ⓒ3774.1.

Official Forms

Notice of appeal to district court or bankruptcy appellate panel from judgment or other final order of bankruptcy court, see form 17.

Committee Note

This rule is an adaptation of Rule 3(d) F.R.App.P.

Committee Note to 1991 Amendments

This rule is amended to keep the United States trustee informed of the progress of the case.

Rule 8005**STAY PENDING APPEAL**

A motion for a stay of the judgment, order, or decree of a bankruptcy judge, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be presented to the bankruptcy judge in the first instance. Notwithstanding Rule 7062 but subject to the power of the district court and the bankruptcy appellate panel reserved hereinafter, the bankruptcy judge may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest. A motion for such relief, or for modification or termination of relief granted by a bankruptcy judge, may be made to the district court or the bankruptcy appellate panel, but the motion shall show why the relief, modification, or termination was not obtained from the bankruptcy judge. The district court or the bankruptcy appellate panel may condition the relief it grants under this rule on the filing of a bond or other appropriate security with the bankruptcy court. When an appeal is taken by a trustee, a bond or other appropriate security may be required, but when an appeal is taken by the United States or an officer or agency thereof or by direction of any department of the Government of the United States a bond or other security shall not be required.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Effect of clerk's retention and indexing of judgment on appealability and proceedings on appeal, see rule 9021.

Security; proceedings against sureties, see rule 9025.

Stay of proceedings to enforce judgment, see rule 7062.

Library References:

C.J.S. Bankruptcy §§ 463, 464.

West's Key No. Digests, Bankruptcy Ⓒ3776.5(1-5).

Committee Note

The first, third, and fourth sentences of this rule are adaptations of Rule 8(a) and (b) F.R.App.P. The second sentence of the rule is derived from § 39(c) of the Bankruptcy Act and confers on the bankruptcy judge discretion respecting the stay or continuation of other proceedings in the case while an appeal is pending.

The last sentence of the rule, which specifically subjects a trustee to the same kind of security requirements as other litigants, is derived from former Bankruptcy Rule 805. The exemption of the United States from the bond or security requirements is the same as the exemption contained in Rule 62(e) F.R.Civ.P.

Sections 363(m) and 364(e) of the Code provide that unless an order approving a sale of property, or authorizing the obtaining of credit or the incurring of debt is stayed pending appeal, the sale of property to a good faith purchaser or a good faith extension of credit, with or without any priority or lien, shall not be affected by the reversal or modification of such order on

appeal, whether or not the purchaser or creditor knows of the pendency of the appeal.

Rule 8006

RECORD AND ISSUES ON APPEAL

Within 10 days after filing the notice of appeal as provided by Rule 8001(a), entry of an order granting leave to appeal, or entry of an order disposing of the last timely motion outstanding of a type specified in Rule 8002(b), whichever is later, the appellant shall file with the clerk and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented. Within 10 days after the service of the appellant's statement the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal and, if the appellee has filed a cross appeal, the appellee as cross appellant shall file and serve a statement of the issues to be presented on the cross appeal and a designation of additional items to be included in the record. A cross appellee may, within 10 days of service of the cross appellant's statement, file and serve on the cross appellant a designation of additional items to be included in the record. The record on appeal shall include the items so designated by the parties, the notice of appeal, the judgment, order, or decree appealed from, and any opinion, findings of fact, and conclusions of law of the court. Any party filing a designation of the items to be included in the record shall provide to the clerk a copy of the items designated or, if the party fails to provide the copy, the clerk shall prepare the copy at the party's expense. If the record designated by any party includes a transcript of any proceeding or a part thereof, the party shall, immediately after filing the designation, deliver to the reporter and file with the clerk a written request for the transcript and make satisfactory arrangements for payment of its cost. All parties shall take any other action necessary to enable the clerk to assemble and transmit the record.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 29, 1994, eff. Aug. 1, 1994.

Cross References

Effect of clerk's retention and indexing of judgment on appealability and proceedings on appeal, see rule 9021.

Record on appeal for all purposes, see rule 8007.

Library References:

C.J.S. Bankruptcy § 462.

West's Key No. Digests. Bankruptcy ☞3777.

Committee Note

This rule is an adaptation of Rule 10(b) F.R.App.P. The last sentence of the rule is derived from Rule 11(a) F.R.App.P.

Committee Note to 1991 Amendments

The seven-day time periods are changed to 10 days to conform to Rule 75(b)(2) F.R.Civ.P. and Rule 10(b)(3) F.R.App.P. The amendment requiring a party to provide a copy of the items designated for the record is to facilitate the amendments to Rule 8007 providing for retention by the bankruptcy clerk of the original record.

Committee Note to 1994 Amendments

The amendment to the first sentence of this rule is made together with the amendment to Rule 8002(b), which provides, in essence, that certain specified postjudgment motions suspend a filed notice of appeal until the disposition of the last of such motions. The purpose of this amendment is to suspend the 10-day period for filing and serving a designation of the record and statement of the issues if a timely postjudgment motion is made and a notice of appeal is suspended under Rule 8002(b). The 10-day period set forth in the first sentence of this rule begins to run when the order disposing of the last of such postjudgment motions outstanding is entered. The other amendments to this rule are stylistic.

Rule 8007**COMPLETION AND TRANSMISSION OF THE RECORD;
DOCKETING OF THE APPEAL**

(a) Duty of Reporter to Prepare and File Transcript. On receipt of a request for a transcript, the reporter shall acknowledge on the request the date it was received and the date on which the reporter expects to have the transcript completed and shall transmit the request, so endorsed, to the clerk or the clerk of the bankruptcy appellate panel. On completion of the transcript the reporter shall file it with the clerk and, if appropriate, notify the clerk of the bankruptcy appellate panel. If the transcript cannot be completed within 30 days of receipt of the request the reporter shall seek an extension of time from the clerk or the clerk of the bankruptcy appellate panel and the action of the clerk shall be entered in the docket and the parties notified. If the reporter does not file the transcript within the time allowed, the clerk or the clerk of the bankruptcy appellate panel shall notify the bankruptcy judge.

(b) Duty of Clerk to Transmit Copy of Record; Docketing of Appeal. When the record is complete for purposes of appeal, the clerk shall transmit a copy thereof forthwith to the clerk of the district court or the clerk of the bankruptcy appellate panel. On receipt of the transmission the clerk of the district court or the clerk of the bankruptcy appellate panel shall enter the appeal in the docket and give notice promptly to all parties to the judgment, order, or decree appealed from of the date on which the appeal was docketed. If the bankruptcy appellate panel directs that additional copies of the record be furnished, the clerk of the bankruptcy appellate panel shall notify the appellant and, if the appellant fails to provide the copies, the clerk shall prepare the copies at the expense of the appellant.

(c) Record for Preliminary Hearing. If prior to the time the record is transmitted a party moves in the district court or before the bankruptcy appellate panel for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk at the request of any party to the appeal shall transmit to the clerk of the district court or the clerk of the bankruptcy appellate panel a copy of the parts of the record as any party to the appeal shall designate.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Effect of clerk's retention and indexing of judgment on appealability and proceedings on appeal, see rule 9021.

Time for filing and service of briefs, see rule 8009.

Library References:

C.J.S. Bankruptcy § 462.

West's Key No. Digests, Bankruptcy Ⓒ3777.

Committee Note

Subdivision (a) is an adaptation of Rule 11(b) F.R.App.P.

Subdivision (b) is similar to former Bankruptcy Rule 807. The duty of the clerk of the bankruptcy court to transmit the record as soon as the record is complete is derived from the second paragraph of Rule 11(b) F.R.App.P. The last sentence of the subdivision applies to appeals to bankruptcy appellate panels. Additional copies of the record may be needed when the appendix to the brief required under Rule 8009(b) is not adequate in the judgment of the bankruptcy appellate panel for disposition of the appeal. If additional copies are required, the appellant will arrange for the production of the copies; if the appellant fails to do so, the clerk of the bankruptcy appellate panel shall prepare the copies at the expense of the appellant.

Subdivision (c) is derived from subdivisions (c), (e) and (f) of Rule 11 F.R.App.P. and subdivision (d) is essentially the same as Rule 11(b) F.R.App.P.

Committee Note to 1991 Amendments

This rule is amended to require that the bankruptcy clerk retain the original record and transmit a copy of the record to the clerk of the district court or bankruptcy appellate panel. Transmission of the original documents may cause disruption in the continuing administration of the case in the bankruptcy court.

Rule 8008**FILING AND SERVICE**

(a) Filing. Papers required or permitted to be filed with the clerk of the district court or the clerk of the bankruptcy appellate panel may be filed by mail addressed to the clerk, but filing is not timely unless the papers are received by the clerk within the time fixed for filing, except that briefs are deemed filed on the day of mailing. An original and one copy of all papers shall be filed when an appeal is to the district court; an original and three copies shall be filed when an appeal is to a bankruptcy appellate panel. The district court or bankruptcy appellate panel may require that additional copies be furnished. Rule 5005(a)(2) applies to papers filed with the clerk of the district court or the clerk of the bankruptcy appellate panel if filing by electronic means is authorized by local rule promulgated pursuant to Rule 8018.

(b) Service of All Papers Required. Copies of all papers filed by any party and not required by these rules to be served by the clerk of the district court or the clerk of the bankruptcy appellate panel shall, at or before the time of filing,

be served by the party or a person acting for the party on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel.

(c) Manner of Service. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) Proof of Service. Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. The clerk of the district court or the clerk of the bankruptcy appellate panel may permit papers to be filed without acknowledgment or proof of service but shall require the acknowledgment or proof of service to be filed promptly thereafter.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 23, 1996, eff. Dec. 1, 1996.

Cross References

Appeal—

After dismissal of direct appeal by court of appeals, when taken, see rule 8001.

By leave, how taken, see rule 8001.

Manner and proof of service of emergency motions, see rule 8011.

Library References:

C.J.S. Bankruptcy §§ 460, 462, 464.

West's Key No. Digests, Bankruptcy Ⓒ3773, 3774.1.

Committee Note

This rule is an adaptation of Rule 25 F.R.App.P. Motions, briefs, appendices when required, statements, and any other filed paper must be accompanied by the specified number of copies. Rules 8001 and 8004 govern the number of copies of the notice of appeal which must be filed.

Committee Note to 1996 Amendments

This rule is amended to permit, but not require, district courts and, where bankruptcy appellate panels have been authorized, circuit councils to adopt local rules that allow filing of documents by electronic means, subject to the limitations contained in Rule 5005(a)(2). See the committee note to the amendments to Rule 5005. Other amendments to this rule are stylistic.

Rule 8009**BRIEFS AND APPENDIX; FILING AND SERVICE**

(a) Briefs. Unless the district court or the bankruptcy appellate panel by local rule or by order excuses the filing of briefs or specifies different time limits:

(1) The appellant shall serve and file a brief within 15 days after entry of the appeal on the docket pursuant to Rule 8007.

(2) The appellee shall serve and file a brief within 15 days after service of the brief of appellant. If the appellee has filed a cross appeal, the brief of the appellee shall contain the issues and argument pertinent to the cross appeal, denominated as such, and the response to the brief of the appellant.

(3) The appellant may serve and file a reply brief within 10 days after service of the brief of the appellee, and if the appellee has cross-appealed, the appellee may file and serve a reply brief to the response of the appellant to the issues presented in the cross appeal within 10 days after service of the reply brief of the appellant. No further briefs may be filed except with leave of the district court or the bankruptcy appellate panel.

(b) Appendix to Brief. If the appeal is to a bankruptcy appellate panel, the appellant shall serve and file with the appellant's brief excerpts of the record as an appendix, which shall include the following:

- (1) The complaint and answer or other equivalent pleadings;
- (2) Any pretrial order;
- (3) The judgment, order, or decree from which the appeal is taken;
- (4) Any other orders relevant to the appeal;
- (5) The opinion, findings of fact, or conclusions of law filed or delivered orally by the court and citations of the opinion if published;
- (6) Any motion and response on which the court rendered decision;
- (7) The notice of appeal;
- (8) The relevant entries in the bankruptcy docket; and
- (9) The transcript or portion thereof, if so required by a rule of the bankruptcy appellate panel.

An appellee may also serve and file an appendix which contains material required to be included by the appellant but omitted by appellant.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Library References:

C.J.S. Bankruptcy § 462.

West's Key No. Digests, Bankruptcy Ⓒ3777.

Committee Note

Subdivision (a) of this rule is adapted from Rules 28(a) and 31(a) F.R.App.P. The introductory clause of the rule recognizes the desirability of allowing local and individual variation in the filing of briefs. The numbered paragraphs prescribe shorter periods than the corresponding periods allowed by Rule 31(a) F.R.App.P.

Subdivision (b), which is similar to an interim rule for bankruptcy appellate panels promulgated by the Ninth Circuit, applies only when an appeal is to an appellate panel. The appellant must prepare an appendix to the brief which contains the documents relevant to the appeal. With the appendix available to each member of the appellate panel, it is unlikely that multiple copies of the record will be necessary. The last sentence of the subdivision enables the appellee to correct an omission of the appellant.

Rule 30 F.R.App.P., which governs the preparation of the appendix in appeals taken to the courts of appeals, specifies fewer documents which must be included in the appendix but permits the parties to include any other material.

Committee Note to 1987 Amendments

The amendment to Rule 8007(c) permits a rule of the bankruptcy appellate panel to provide that the record is to be retained rather than transmitted. The new paragraph (9) of subdivision (b) of this rule complements Rule 8007(c) by authorizing a rule of the panel to require inclusion of the transcript or a portion thereof in the appendix.

Rule 8010

FORM OF BRIEFS; LENGTH

(a) Form of Briefs. Unless the district court or the bankruptcy appellate panel by local rule otherwise provides, the form of brief shall be as follows:

(1) *Brief of the Appellant.* The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(A) A table of contents, with page references, and a table of cases alphabetically arranged, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(B) A statement of the basis of appellate jurisdiction.

(C) A statement of the issues presented and the applicable standard of appellate review.

(D) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of the proceedings, and the disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record.

(E) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.

(F) A short conclusion stating the precise relief sought.

(2) *Brief of the Appellee.* The brief of the appellee shall conform to the requirements of paragraph (1)(A)–(E) of this subdivision, except that a statement of the basis of appellate jurisdiction, of the issues, or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(b) Reproduction of Statutes, Rules, Regulations, or Similar Material. If determination of the issues presented requires reference to the Code or other statutes, rules, regulations, or similar material, relevant parts thereof shall be reproduced in the brief or in an addendum or they may be supplied to the court in pamphlet form.

(c) Length of Briefs. Unless the district court or the bankruptcy appellate panel by local rule or order otherwise provides, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or similar material.

Library References:

C.J.S. Bankruptcy § 462.

West's Key No. Digests, Bankruptcy ☞3777.

Committee Note

This rule is derived from subdivisions (a), (b), (c), and (f) of Rule 28 F.R.App.P.

When an appeal is to a bankruptcy appellate panel and an appendix is filed pursuant to Rule 8009(b) and reference is made in a brief to parts of the record included in the appendix, the reference should be to the appropriate pages of the appendix at which those parts appear.

Rule 8011**MOTIONS**

(a) Content of Motions; Response; Reply. A request for an order or other relief shall be made by filing with the clerk of the district court or the clerk of the bankruptcy appellate panel a motion for such order or relief with proof of service on all other parties to the appeal. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order within seven days after service of the motion, but the district court or the bankruptcy appellate panel may shorten or extend the time for responding to any motion.

(b) Determination of Motions for Procedural Orders. Notwithstanding subdivision (a) of this rule, motions for procedural orders, including any motion under Rule 9006, may be acted on at any time, without awaiting a response thereto and without hearing. Any party adversely affected by such action may move for reconsideration, vacation, or modification of the action.

(c) Determination of All Motions. All motions will be decided without oral argument unless the court orders otherwise. A motion for a stay, or for other emergency relief may be denied if not presented promptly.

(d) Emergency Motions. Whenever a movant requests expedited action on a motion on the ground that, to avoid irreparable harm, relief is needed in less time than would normally be required for the district court or bankruptcy appellate panel to receive and consider a response, the word "Emergency" shall precede the title of the motion. The motion shall be accompanied by an affidavit setting forth the nature of the emergency. The motion shall state whether all grounds advanced in support thereof were submitted to the bankruptcy judge and, if any grounds relied on were not submitted, why the motion should not be remanded to the bankruptcy judge for reconsideration. The motion shall include the office addresses and telephone numbers of moving and opposing counsel and shall be served pursuant to Rule 8008. Prior to filing the motion, the movant shall make every practicable effort to notify opposing counsel in time for counsel to respond to the motion. The affidavit accompanying the motion shall also state when and how opposing counsel was notified or if opposing counsel was not notified why it was not practicable to do so.

(e) Power of a Single Judge to Entertain Motions. A single judge of a bankruptcy appellate panel may grant or deny any request for relief which under

these rules may properly be sought by motion, except that a single judge may not dismiss or otherwise decide an appeal or a motion for leave to appeal. The action of a single judge may be reviewed by the panel.

Cross References

Signing and verification of papers, see rule 9011.

Library References:

C.J.S. Bankruptcy §§ 463, 464.

West's Key No. Digests, Bankruptcy ⌘3776.1.

Committee Note

Subdivisions (a), (b) and (e) of this rule conform substantially to subdivisions (a), (b) and (c) of Rule 27 F.R.App.P. Subdivisions (c) and (d) are taken from Rule 13(c) and (d) of the Rules of the First Circuit governing appeals to bankruptcy appellate panels.

Rule 8012**ORAL ARGUMENT**

Oral argument shall be allowed in all cases unless the district judge or the judges of the bankruptcy appellate panel unanimously determine after examination of the briefs and record, or appendix to the brief, that oral argument is not needed. Any party shall have an opportunity to file a statement setting forth the reason why oral argument should be allowed.

Oral argument will not be allowed if (1) the appeal is frivolous; (2) the dispositive issue or set of issues has been recently authoritatively decided; or (3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

Library References:

C.J.S. Bankruptcy § 462.

West's Key No. Digests, Bankruptcy ⌘3777.

Committee Note

This rule is derived from Rule 34(a) F.R.App.P. The other details of oral argument which are covered by the remaining subdivisions of Rule 34 F.R.App.P. are not in these rules and are left to local rule or order of the court.

Rule 8013**DISPOSITION OF APPEAL; WEIGHT ACCORDED
BANKRUPTCY JUDGE'S FINDINGS OF FACT**

On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Findings by court, see rule 7052.

Suspension of this rule, see rule 8019.

Library References:

C.J.S. Bankruptcy § 468.

West's Key No. Digests, Bankruptcy ☞3785.1-3788.

Committee Note

This rule accords to the findings of a bankruptcy judge the same weight given the findings of a district judge under Rule 52 F.R.Civ.P. See also Rules 7052(a) and 9014.

Committee Note to 1987 Amendments

The amendment to this rule conforms the appellate review standard to Rule 52 F.R.Civ.P., as amended in August 1985.

Rule 8014

COSTS

Except as otherwise provided by law, agreed to by the parties, or ordered by the district court or the bankruptcy appellate panel, costs shall be taxed against the losing party on an appeal. If a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court. Costs incurred in the production of copies of briefs, the appendices, and the record and in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal and the fee for filing the notice of appeal shall be taxed by the clerk as costs of the appeal in favor of the party entitled to costs under this rule.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Library References:

C.J.S. Bankruptcy §§ 36 et seq., 101, 348, 470.

West's Key No. Digests, Bankruptcy ☞2181-2191.

Committee Note

This rule is an adaptation of Rule 39(a), (c) and (e) of the F.R.App.P. Under this rule all costs are taxed by the clerk of the bankruptcy court.

Rule 8015

MOTION FOR REHEARING

Unless the district court or the bankruptcy appellate panel by local rule or by court order otherwise provides, a motion for rehearing may be filed within 10 days after entry of the judgment of the district court or the bankruptcy appellate panel. If a timely motion for rehearing is filed, the time for appeal to the court of appeals for all parties shall run from the entry of the order denying rehearing or the entry of a subsequent judgment.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Library References:

C.J.S. Bankruptcy §§ 462, 465.

West's Key No. Digests, Bankruptcy ☞3778.

Committee Note

This is an adaptation of the first sentence of Rule 40(a) F.R.App.P. The filing of a motion for rehearing does not toll the time for taking an appeal to the court of appeals from the district court or the bankruptcy appellate panel. Appeals from a district court or a bankruptcy appellate panel are to the appropriate court of appeals. Under Rule 4(a)(4) F.R.App.P. the filing of post-trial motions in the district court has the effect of vitiating any prior notice of appeal and, on the district court's disposition of those post-trial motions, a new appeal period starts. Rule 4 F.R.App.P. does not, however, contain any provision which stays or otherwise alters the time for taking an appeal to the court of appeals when a motion for rehearing is filed under Rule 8015 with the district court or bankruptcy appellate panel.

Committee Note to the 1987 Amendments

The amendment, which is derived from Rule 8002(b), Rule 4(a)(4) F.R.App.P., and Rule 11.1 Sup.Ct.R., clarifies the effect of the filing of a timely motion for rehearing. If a timely motion is filed, the appeal period to the court of appeals begins to run on the entry of an order denying the motion or the entry of a subsequent judgment.

Rule 8016

**DUTIES OF CLERK OF DISTRICT COURT AND
BANKRUPTCY APPELLATE PANEL**

(a) Entry of Judgment. The clerk of the district court or the clerk of the bankruptcy appellate panel shall prepare, sign and enter the judgment following receipt of the opinion of the court or the appellate panel or, if there is no opinion, following the instruction of the court or the appellate panel. The notation of a judgment in the docket constitutes entry of judgment.

(b) Notice of Orders or Judgments; Return of Record. Immediately on the entry of a judgment or order the clerk of the district court or the clerk of the bankruptcy appellate panel shall transmit a notice of the entry to each party to the appeal, to the United States trustee, and to the clerk, together with a copy of any opinion respecting the judgment or order, and shall make a note of the transmission in the docket. Original papers transmitted as the record on appeal shall be returned to the clerk on disposition of the appeal.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Committee Note

Subdivision (a) of this rule is adapted from Rule 36 F.R.App.P. Subdivision (b) is similar to subdivisions (c) and (d) of Rule 45 F.R.App.P.

Committee Note to 1991 Amendments

Subdivision (b) is amended to enable the United States trustee to monitor the progress of the case. The requirements of this subdivision apply to an

order of the district court or bankruptcy appellate panel staying its judgment pending appeal to the court of appeals pursuant to Rule 8017(b).

Rule 8017

STAY OF JUDGMENT OF DISTRICT COURT OR BANKRUPTCY APPELLATE PANEL

(a) Automatic Stay of Judgment on Appeal. Judgments of the district court or the bankruptcy appellate panel are stayed until the expiration of 10 days after entry, unless otherwise ordered by the district court or the bankruptcy appellate panel.

(b) Stay Pending Appeal to the Court of Appeals. On motion and notice to the parties to the appeal, the district court or the bankruptcy appellate panel may stay its judgment pending an appeal to the court of appeals. The stay shall not extend beyond 30 days after the entry of the judgment of the district court or the bankruptcy appellate panel unless the period is extended for cause shown. If before the expiration of a stay entered pursuant to this subdivision there is an appeal to the court of appeals by the party who obtained the stay, the stay shall continue until final disposition by the court of appeals. A bond or other security may be required as a condition to the grant or continuation of a stay of the judgment. A bond or other security may be required if a trustee obtains a stay but a bond or security shall not be required if a stay is obtained by the United States or an officer or agency thereof or at the direction of any department of the Government of the United States.

(c) Power of Court of Appeals Not Limited. This rule does not limit the power of a court of appeals or any judge thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

Library References:

C.J.S. Bankruptcy §§ 463, 464; Federal Civil Procedure § 1263; Federal Courts §§ 294(1) et seq.
West's Key No. Digests, Bankruptcy Ⓒ3776.5(1-5); Federal Civil Procedure Ⓒ2700; Federal Courts Ⓒ684-687.

Committee Note

This rule is derived from Rule 62 F.R.Civ.P. and Rule 41 F.R.App.P.

Subdivision (a) accords to the parties to an appeal 10 days within which to decide whether to pursue an appeal to the court of appeals. In ordinary civil litigation there is a similar opportunity. Rule 62(a) F.R.Civ.P. automatically stays enforcement of a district court's judgment in a civil action and Rule 41(a) F.R.App.P. provides that the mandate of the court of appeals shall not issue for 21 days, unless the court otherwise directs. The district court or bankruptcy appellate panel may reduce the 10 day period of this subdivision.

Subdivision (b) vests in the district courts and the bankruptcy appellate panels the same authority the courts of appeals have under Rule 41(b) F.R.App.P. to stay their judgments pending appeal. Perfection of an appeal to the court of appeals while a stay entered by the district court or bankruptcy

appellate panel is in effect results in the automatic continuation of that stay during the course of the appeal in the court of appeals.

Subdivision (c) is the same as Rule 62(g) F.R.Civ.P.

Rule 8018

RULES BY CIRCUIT COUNCILS AND DISTRICT COURTS; PROCEDURE WHEN THERE IS NO CONTROLLING LAW

(a) Local Rules by Circuit Councils and District Courts

(1) Circuit councils which have authorized bankruptcy appellate panels pursuant to 28 U.S.C. § 158(b) and the district courts may, acting by a majority of the judges of the council or district court, make and amend rules governing practice and procedure for appeals from orders or judgments of bankruptcy judges to the respective bankruptcy appellate panel or district court consistent with—but not duplicative of—Acts of Congress and the rules of this Part VIII. Local rules shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Rule 83 F.R.Civ.P. governs the procedure for making and amending rules to govern appeals.

(2) A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

(b) Procedure When There is No Controlling Law. A bankruptcy appellate panel or district judge may regulate practice in any manner consistent with federal law, these rules, Official Forms, and local rules of the circuit council or district court. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, Official Forms, or the local rules of the circuit council or district court unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 27, 1995, eff. Dec. 1, 1995.

Cross References

Promulgation of local rules governing bankruptcy procedure, see rule 9029.

Library References:

C.J.S. Bankruptcy § 6; Courts §§ 129 et seq.

West's Key No. Digests, Bankruptcy ☞2129; Courts ☞81-86.

Committee Note

This rule is similar to Rule 47 F.R.App.P. and Rule 83 F.R.Civ.P. Local rules governing procedure before the bankruptcy courts may be promulgated under Rule 9028.

Committee Note to 1987 Amendments

Rule 83 F.R.Civ.P. was amended in August 1985 to require greater participation by the public in the rule making process. The amendment to Rule 8018 incorporates Rule 83 F.R.Civ.P. Under 28 U.S.C. § 158(b)(2), appeals may be taken to a bankruptcy appellate panel only if the district court so authorizes. If a district court does not authorize appeals to the bankruptcy

appellate panel, appeals will be to the district court. This rule is amended to authorize district courts to promulgate rules for appeals.

Rule 8019**SUSPENSION OF RULES IN PART VIII**

In the interest of expediting decision or for other cause, the district court or the bankruptcy appellate panel may suspend the requirements or provisions of the rules in Part VIII, except Rules 8001, 8002, and 8013, and may order proceedings in accordance with the direction.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Library References:

C.J.S. Bankruptcy § 6; Courts §§ 132, 133.

West's Key No. Digests, Bankruptcy ⌋2129; Courts ⌋82.

Committee Note

This rule is derived from Rule 2 F.R.App.P.

Rule 8020**DAMAGES AND COSTS FOR FRIVOLOUS APPEAL**

If a district court or bankruptcy appellate panel determines that an appeal from an order, judgment, or decree of a bankruptcy judge is frivolous, it may, after a separately filed motion or notice from the district court or bankruptcy appellate panel and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

[Adopted Apr. 11, 1997, eff. Dec. 1, 1997.]

Committee Note

This rule is added to clarify that a district court hearing an appeal, or a bankruptcy appellate panel, has the authority to award damages and costs to an appellee if it finds that the appeal is frivolous. By conforming to the language of Rule 38 F.R.App.P., this rule recognizes that the authority to award damages and costs in connection with frivolous appeals is the same for district courts sitting as appellate courts, bankruptcy appellate panels, and courts of appeals.

PART IX

GENERAL PROVISIONS

Rule

- 9001. General Definitions
- 9002. Meanings of Words in the Federal Rules of Civil Procedure When Applicable to Cases Under the Code
- 9003. Prohibition of Ex Parte Contacts
- 9004. General Requirements of Form
- 9005. Harmless Error
- 9006. Time
- 9007. General Authority to Regulate Notices
- 9008. Service or Notice by Publication
- 9009. Forms
- 9010. Representation and Appearances; Powers of Attorney
- 9011. Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers
- 9012. Oaths and Affirmations
- 9013. Motions: Form and Service
- 9014. Contested Matters
- 9015. Jury Trials
- 9016. Subpoena
- 9017. Evidence
- 9018. Secret, Confidential, Scandalous, or Defamatory Matter
- 9019. Compromise and Arbitration
- 9020. Contempt Proceedings
- 9021. Entry of Judgment
- 9022. Notice of Judgment or Order
- 9023. New Trials; Amendment of Judgments
- 9024. Relief From Judgment or Order
- 9025. Security: Proceedings Against Sureties
- 9026. Exceptions Unnecessary
- 9027. Removal
- 9028. Disability of a Judge
- 9029. Local Bankruptcy Rules; Procedure When There Is No Controlling Law
- 9030. Jurisdiction and Venue Unaffected
- 9031. Masters Not Authorized
- 9032. Effect of Amendment of Federal Rules of Civil Procedure
- 9033. Review of Proposed Findings of Fact and Conclusions of Law in Non-Core Proceedings
- 9034. Transmittal of Pleadings, Motion Papers, Objections, and Other Papers to the United States Trustee
- 9035. Applicability of Rules in Judicial Districts in Alabama and North Carolina
- 9036. Notice by Electronic Transmission

Rule 9001

GENERAL DEFINITIONS

The definitions of words and phrases in § 101, § 902 and § 1101 and the rules of construction in § 102 of the Code govern their use in these rules. In

addition, the following words and phrases used in these rules have the meanings indicated:

(1) "Bankruptcy clerk" means a clerk appointed pursuant to 28 U.S.C. § 156(b).

(2) "Bankruptcy Code" or "Code" means title 11 of the United States Code.

(3) "Clerk" means bankruptcy clerk, if one has been appointed, otherwise clerk of the district court.

(4) "Court" or "judge" means the judicial officer before whom a case or proceeding is pending.

(5) "Debtor." When any act is required by these rules to be performed by a debtor or when it is necessary to compel attendance of a debtor for examination and the debtor is not a natural person: (A) if the debtor is a corporation, "debtor" includes, if designated by the court, any or all of its officers, members of its board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control; (B) if the debtor is a partnership, "debtor" includes any or all of its general partners or, if designated by the court, any other person in control.

(6) "Firm" includes a partnership or professional corporation of attorneys or accountants.

(7) "Judgment" means any appealable order.

(8) "Mail" means first class, postage prepaid.

(9) "Regular associate" means any attorney regularly employed by, associated with, or counsel to an individual or firm.

(10) "Trustee" includes a debtor in possession in a chapter 11 case.

(11) "United States trustee" includes an assistant United States trustee and any designee of the United States trustee.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Clerk defined, see rule 9002.

Judgment defined, see rules 7054, 9002.

Library References:

C.J.S. Bankruptcy § 6.

West's Key No. Digests, Bankruptcy ⇨2129.

Committee Note to 1987 Amendments

The terms "bankruptcy clerk" and "clerk" have been defined to reflect that unless otherwise stated, for the purpose of these rules, the terms are meant to identify the court officer for the bankruptcy records. If a bankruptcy clerk is appointed, all filings are made with the bankruptcy clerk. If one has not been appointed, all filings are with the clerk of the district court. Rule 5005.

The rule is also amended to include a definition of "court or judge." Since a case or proceeding may be before a bankruptcy judge or a judge of the district court, "court or judge" is defined to mean the judicial officer before whom the case or proceeding is pending.

Committee Note to 1991 Amendments

Section 582 of title 28 provides that the Attorney General may appoint one or more assistant United States trustees in any region when the public interest so requires. This rule is amended to clarify that an assistant United States trustee, as well as any designee of the United States trustee, is included within the meaning of “United States trustee” in the rules.

Rule 9002**MEANINGS OF WORDS IN THE FEDERAL RULES OF CIVIL
PROCEDURE WHEN APPLICABLE TO CASES
UNDER THE CODE**

The following words and phrases used in the Federal Rules of Civil Procedure made applicable to cases under the Code by these rules have the meanings indicated unless they are inconsistent with the context:

(1) “Action” or “civil action” means an adversary proceeding or, when appropriate, a contested petition, or proceedings to vacate an order for relief or to determine any other contested matter.

(2) “Appeal” means an appeal as provided by 28 U.S.C. § 158.

(3) “Clerk” or “clerk of the district court” means the court officer responsible for the bankruptcy records in the district.

(4) “District court,” “trial court,” “court,” “district judge,” or “judge” means bankruptcy judge if the case or proceeding is pending before a bankruptcy judge.

(5) “Judgment” includes any order appealable to an appellate court.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Aug. 1, 1993.

Cross References

Contested matters, see rule 9014.

Procedural rules which govern adversary proceedings, see rule 7001 et seq.

Library References:

C.J.S. Bankruptcy § 6.

West’s Key No. Digests, Bankruptcy ☞2129.

Committee Note to 1993 Amendments

This rule is revised to include the words “district judge” in anticipation of amendments to the Federal Rules of Civil Procedure.

Rule 9003**PROHIBITION OF EX PARTE CONTACTS**

(a) General Prohibition. Except as otherwise permitted by applicable law, any examiner, any party in interest, and any attorney, accountant, or employee of a party in interest shall refrain from ex parte meetings and communications with the court concerning matters affecting a particular case or proceeding.

(b) United States Trustee. Except as otherwise permitted by applicable law, the United States trustee and assistants to and employees or agents of the

United States trustee shall refrain from ex parte meetings and communications with the court concerning matters affecting a particular case or proceeding. This rule does not preclude communications with the court to discuss general problems of administration and improvement of bankruptcy administration, including the operation of the United States trustee system.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Disqualification of judge, see rule 5004.

Library References:

C.J.S. Bankruptcy §§ 6, 194, 195.

West's Key No. Digests, Bankruptcy Ⓒ2129, 3001.

Committee Note

This rule regulates the actions of parties in interest and their attorneys or others employed by parties in interest. This regulation of the conduct of parties in interest and their representative is designed to insure that the bankruptcy system operates fairly and that no appearance of unfairness is created. See H.Rep. No. 95-595, 95th Cong., 1st Sess. 95 et seq. (1977).

This rule is not a substitute for or limitation of any applicable canon of professional responsibility or judicial conduct. See, *e.g.*, Canon 7, EC7-35, Disciplinary Rule 7-110(B) of the Code of Professional Responsibility: "Generally, in adversary proceedings a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which he presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party;" and Canon 3A(4) of the Code of Judicial Conduct: "A judge should . . . neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding."

Committee Note to 1987 Amendments

This rule is amended to apply to both the bankruptcy judges and the district judges of the district.

Committee Note to 1991 Amendments

Subdivision (a) is amended to extend to examiners the prohibition on ex parte meetings and communications with the court.

Subdivision (b) is derived from Rule X-1010.

Rule 9004

GENERAL REQUIREMENTS OF FORM

(a) Legibility; Abbreviations. All petitions, pleadings, schedules and other papers shall be clearly legible. Abbreviations in common use in the English language may be used.

(b) Caption. Each paper filed shall contain a caption setting forth the name of the court, the title of the case, the bankruptcy docket number, and a brief designation of the character of the paper.

Library References:

C.J.S. Bankruptcy §§ 5, 31.

West's Key No. Digests, Bankruptcy Ⓒ2127.1, 2162.

Committee Note

Subdivision (b). Additional requirements applicable to the caption for a petition are found in Rule 1005, to the caption for notices to creditors in Rule 2002(m), and to the caption for a pleading or other paper filed in an adversary proceeding in Rule 7010. Failure to comply with this or any other rule imposing a merely formal requirement does not ordinarily result in the loss of rights. See Rule 9005.

Rule 9005**HARMLESS ERROR**

Rule 61 F.R.Civ.P. applies in cases under the Code. When appropriate, the court may order the correction of any error or defect or the cure of any omission which does not affect substantial rights.

Library References:

C.J.S. Bankruptcy § 468.

West's Key No. Digests, Bankruptcy Ⓒ3788.

Rule 9006**TIME**

(a) Computation. In computing any period of time prescribed or allowed by these rules or by the Federal Rules of Civil Procedure made applicable by these rules, by the local rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the clerk's office inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 8 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 5001(c), "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the court is held.

(b) Enlargement.

(1) In General. Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on

motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(2) *Enlargement Not Permitted.* The court may not enlarge the time for taking action under Rules 1007(d), 2003(a) and (d), 7052, 9023, and 9024.

(3) *Enlargement Limited.* The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 8002, and 9033, only to the extent and under the conditions stated in those rules.

(c) Reduction.

(1) *In General.* Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.

(2) *Reduction Not Permitted.* The court may not reduce the time for taking action pursuant to Rules 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2), 4003(a), 4004(a), 4007(c), 8002, and 9033(b).

(d) For Motions—Affidavits. A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than five days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 9023, opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time.

(e) Time of Service. Service of process and service of any paper other than process or of notice by mail is complete on mailing.

[Text of paragraph (f) effective until December 1, 2001, absent contrary Congressional action. See, also, revised text, post.]

(f) Additional Time After Service by Mail. When there is a right or requirement to do some act or undertake some proceedings within a prescribed period after service of a notice or other paper and the notice or paper other than process is served by mail, three days shall be added to the prescribed period.

[Text of paragraph (f) effective December 1, 2001, absent contrary Congressional action. See, also, former text, ante.]

(f) Additional Time After Service by Mail or Under Rule 5(b)(2)(C) or (D) F.R.Civ.P. When there is a right or requirement to do some act or undertake some proceedings within a prescribed period after service of a notice or other paper and the notice or paper other than process is served by mail or under Rule 5(b)(2)(C) or (D) F. R. Civ. P., three days shall be added to the prescribed period.

(g) Grain Storage Facility Cases. This rule shall not limit the court's authority under § 557 of the Code to enter orders governing procedures in cases in which the debtor is an owner or operator of a grain storage facility.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; April 25, 1989, eff. Aug. 1, 1989; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 29, 1999, eff. Dec. 1, 1999; Apr. 24, 2001, eff. Dec. 1, 2001.

Cross References

Motions—

Form and service, see rule 9013.

On appeal to district court or bankruptcy appellate panel acted upon without hearing at any time, see rule 8011.

Library References:

C.J.S. Bankruptcy §§ 29, 92, 161, 270 et seq., 338 et seq., 460; Time §§ 3 et seq.

West's Key No. Digests, Bankruptcy Ⓒ2157, 2437, 2722, 2897.1–2900(2), 3103(1–5), 3312, 3382.1, 3383, 3533.1, 3774.1; Time Ⓒ1 et seq.

Committee Note

Subdivision (a). This rule is an adaptation of Rule 6 F.R.Civ.P. It governs the time for acts to be done and proceedings to be had in cases under the Code and any litigation arising therein.

Subdivision (b) is patterned after Rule 6(b) F.R.Civ.P. and Rule 26(b) F.R.App.P.

Paragraph (1) of this subdivision confers on the court discretion generally to authorize extensions of time for doing acts required or allowed by these rules or orders of court. The exceptions to this general authority to extend the time are contained in paragraphs (2) and (3).

In the interest of prompt administration of bankruptcy cases certain time periods may not be extended. Paragraph (2) lists the rules which establish time periods which may not be extended: Rule 1007(d), time for filing a list of 20 largest creditors; Rule 1017(b)(3), 30 day period for sending notice of dismissal for failure to pay the filing fee; Rule 1019(2), 20 day period for notice of conversion to a chapter 7 case; Rule 2003(a), meeting of creditors not more than 40 days after order for relief; Rule 2003(d), 10 days for filing a motion for resolution of an election dispute; Rule 3014, time for the § 1111(b)(2) election; Rule 4001(b), expiration of stay 30 days following the commencement of final hearing; Rule 7052(b), 10 day period to move to amend findings of fact; Rule 9015(f), 20 day period to move for judgment notwithstanding the verdict; Rule 9023, 10 day period to move for a new trial; and Rule 9024, time to move for relief from judgment.

Many rules which establish a time for doing an act also contain a specific authorization and standard for granting an extension of time and, in some cases, limit the length of an extension. In some instances it would be inconsistent with the objective of the rule and sound administration of the case to permit extension under rule 9006(b)(1), but with respect to the other rules it is appropriate that the power to extend time be supplemented by Rule 9006(b)(1). Unless a rule which contains a specific authorization to extend time is listed in paragraph (3) of this subdivision, an extension of the time may be granted under paragraph (1) of this subdivision. If a rule is included in paragraph (3) an extension may not be granted under paragraph (1). The following rules are listed in paragraph (3): Rule 1006(b)(2), time for paying the filing fee in installments; Rule 3002(c), 90 day period for filing a claim in a chapter 7 or 13 case; Rule 4003(b), 30 days for filing objections to a claim of exemption; Rule 4004(a), 60 day period to object to a discharge; Rule 4007(b), 60 day period to file a dischargeability complaint; and Rule 8002, 10 days for filing a notice of appeal.

Subdivision (c). Paragraph (1) of this subdivision authorizes the reduction of the time periods established by these rules or an order of the court.

Excluded from this general authority are the time periods established by the rules referred to in paragraph (2) of the subdivision: Rule 2002(a) and (b), 20 day and 25 day notices of certain hearings and actions in the case; Rule 2003(a), meeting of creditors to be not less than 20 days after the order for relief; Rule 3002(c), 90 days for filing a claim in a chapter 7 or 13 case; Rule 3014, time for § 1111(b)(2) election; Rule 3015, 10 day period after filing of petition to file a chapter 13 plan; Rule 4003(a), 15 days for a dependent claim exemptions; Rule 4004(a), 60 day period to object to a discharge; Rule 4007(c), 60 day period to file a dischargeability complaint; and Rule 8002, 10 days for filing a notice of appeal. Reduction of the time periods fixed in the rules referred to in this subdivision would be inconsistent with the purposes of those rules and would cause harmful uncertainty.

Subdivision (d) is derived from Rule 6(d) F.R.Civ.P. The reference is to Rule 9023 instead of to Rule 59(c) F.R.Civ.P. because Rule 9023 incorporates Rule 59 F.R.Civ.P. but excepts therefrom motions to reconsider orders allowing and disallowing claims.

Subdivision (f) is new and is the same as Rule 6(e) F.R.Civ.P.

Committee Note to 1987 Amendments

Subdivision (a) is amended to conform to the 1984 amendments to Rule 6 F.R.Civ.P.

Subdivision (b). The reference to Rule 4001(b) in paragraph (3) is deleted because of the amendments made to Rule 4001. Rule 9033, which is new, contains specific provisions governing the extension of time to file objections to proposed findings of fact and conclusions of law. Rule 9033 is added to the rules referred to in paragraph (3).

Subdivision (c). Rule 4001(b)(2) and (c)(2) provide that a final hearing on a motion to use cash collateral or a motion for authority to obtain credit may be held no earlier than 15 days after the filing of the motion. These two rules are added to paragraph (2) to make it clear that the 15 day period may not be reduced. Rule 9033 is also added to paragraph (2).

Subdivision (g) is new. Under § 557 of the Code, as enacted by the 1984 amendments, the court is directed to expedite grain storage facility cases. This subdivision makes it clear this rule does not limit the court's authority under § 557.

The original Advisory Committee Note to this rule included the 25 day notice period of Rule 2002(b) as a time period which may not be reduced under Rule 9006(C)(2). This was an error.

Committee Note to 1991 Amendments

As a result of the 1989 amendment to this rule, the method of computing time under subdivision (a) is not the same as the method of computing time under Rule 6(a) F.R.Civ.P. Subdivision (a) is amended to provide that it governs the computation of time periods prescribed by the Federal Rules of Civil Procedure when the Bankruptcy Rules make a civil rule applicable to a bankruptcy case or proceeding.

Subdivision (b)(2) is amended because of the deletion of Rule 1019(2). Reference to Rule 9015(f) is deleted because of the abrogation of Rule 9015 in 1987.

Subdivision (b)(3) is amended to limit the enlargement of time regarding dismissal of a chapter 7 case for substantial abuse in accordance with Rule 1017(e).

Committee Note to 1996 Amendments

Subdivision (c)(2) is amended to conform to the abrogation of Rule 2002(a)(4) and the renumbering of Rule 2002(a)(8) to Rule 2002(a)(7).

Committee Note to 1999 Amendments

Rule 9006(b)(2) is amended to conform to the abrogation of Rule 1017(b)(3).

Committee Comments to 2001 Amendments

Rule 5(b) F. R. Civ. P., which is made applicable in adversary proceedings by Rule 7005, is being restyled and amended to authorize service by electronic means—or any other means not otherwise authorized under Rule 5(b)—if consent is obtained from the person served. The amendment to Rule 9006(f) is intended to extend the three-day “mail rule” to service under Rule 5(b)(2)(D), including service by electronic means. The three-day rule also will apply to service under Rule 5(b)(2)(C) F. R. Civ. P. when the person served has no known address and the paper is served by leaving a copy with the clerk of the court.

Rule 9007**GENERAL AUTHORITY TO REGULATE NOTICES**

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Construction of phrase “after notice and a hearing”, see § 102 of this title.

Notice as is appropriate of order for relief, see § 342 of this title.

Library References:

C.J.S. Bankruptcy §§ 30, 275.

West's Key No. Digests, Bankruptcy Ⓒ2131.

Rule 9008**SERVICE OR NOTICE BY PUBLICATION**

Whenever these rules require or authorize service or notice by publication, the court shall, to the extent not otherwise specified in these rules, determine the form and manner thereof, including the newspaper or other medium to be used and the number of publications.

Cross References

Construction of phrase “after notice and a hearing”, see § 102 of this title.

Notice as is appropriate of order for relief, see § 342 of this title.

Library References:

C.J.S. Bankruptcy §§ 30, 275.
West's Key No. Digests, Bankruptcy ⇨2131.

Rule 9009**FORMS**

The Official Forms prescribed by the Judicial Conference of the United States shall be observed and used with alterations as may be appropriate. Forms may be combined and their contents rearranged to permit economies in their use. The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code. The forms shall be construed to be consistent with these rules and the Code.

Amended Apr. 30, 1991, eff. Aug. 1, 1991.

Library References:

C.J.S. Bankruptcy § 6.
West's Key No. Digests, Bankruptcy ⇨2129.

Committee Note

The rule continues the obligatory character of the Official Forms in the interest of facilitating the processing of the paperwork of bankruptcy administration, but provides that Official Forms will be prescribed by the Judicial Conference of the United States. The Supreme Court and the Congress will thus be relieved of the burden of considering the large number of complex forms used in bankruptcy practice. The use of the Official Forms has generally been held subject to a "rule of substantial compliance" and some of these rules, for example Rule 1002, specifically state that the filed document need only "conform substantially" to the Official Form. See also Rule 9005. The second sentence recognizes the propriety of combining and rearranging Official Forms to take advantage of technological developments and resulting economies.

The Director of the Administrative Office is authorized to issue additional forms for the guidance of the bar.

Committee Note to 1991 Amendments

Rule 9029 is amended to clarify that local court rules may not prohibit or limit the use of the Official Forms.

Rule 9010**REPRESENTATION AND APPEARANCES;
POWERS OF ATTORNEY**

(a) Authority to Act Personally or by Attorney. A debtor, creditor, equity security holder, indenture trustee, committee or other party may (1) appear in a case under the Code and act either in the entity's own behalf or by an attorney authorized to practice in the court, and (2) perform any act not constituting the practice of law, by an authorized agent, attorney in fact, or proxy.

(b) Notice of Appearance. An attorney appearing for a party in a case under the Code shall file a notice of appearance with the attorney's name, office

address and telephone number, unless the attorney's appearance is otherwise noted in the record.

(c) Power of Attorney. The authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose other than the execution and filing of a proof of claim or the acceptance or rejection of a plan shall be evidenced by a power of attorney conforming substantially to the appropriate Official Form. The execution of any such power of attorney shall be acknowledged before one of the officers enumerated in 28 U.S.C. § 459, § 953, Rule 9012, or a person authorized to administer oaths under the laws of the state where the oath is administered.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Ex parte relief from automatic stay, see rule 4001.

Payment of dividends to persons authorized to receive them by power of attorney executed and filed in accordance with this rule, see rule 3009.

Library References:

C.J.S. Bankruptcy § 5.

West's Key No. Digests, Bankruptcy ⇨2127.1.

Committee Note

This rule is substantially the same as former Bankruptcy Rule 910 and does not purport to change prior holdings prohibiting a corporation from appearing *pro se*. See *In re Las Colinas Development Corp.*, 585 F.2d 7 (1st Cir. 1978).

Committee Note to 1987 Amendments

Subdivision (c) is amended to include a reference to Rule 9012 which is amended to authorize a bankruptcy judge or clerk to administer oaths.

Committee Note to 1991 Amendments

References to Official Form numbers in subdivision (c) are deleted in anticipation of future revision and renumbering of the Official Forms.

1994 Legislation

Section 304(g) of Pub.L. 103-394, October 22, 1994, 108 Stat. 4106, provided:

“(g) Appearance Before Court.—Child support creditors or their representatives shall be permitted to appear and intervene without charge, and without meeting any special local court rule requirement for attorney appearances, in any bankruptcy case or proceeding in any bankruptcy court or district court of the United States if such creditors or representatives file a form in such court that contains information detailing the child support debt, its status, and other characteristics.”

Rule 9011

**SIGNING OF PAPERS; REPRESENTATIONS TO THE COURT;
SANCTIONS; VERIFICATION AND COPIES OF PAPERS**

(a) Signature. Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to the Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) *How Initiated.*

(A) *By Motion.* A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly

responsible for violations committed by its partners, associates, and employees.

(B) *On Court's Initiative.* On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) *Nature of Sanction; Limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 7026 through 7037.

(e) Verification. Except as otherwise specifically provided by these rules, papers filed in a case under the Code need not be verified. Whenever verification is required by these rules, an unsworn declaration as provided in 28 U.S.C. § 1746 satisfies the requirement of verification.

(f) Copies of Signed or Verified Papers. When these rules require copies of a signed or verified paper, it shall suffice if the original is signed or verified and the copies are conformed to the original.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 11, 1997, eff. Dec. 1, 1997.

Cross References

Affidavit in support of—

Complaint seeking temporary restraining order, see rule 7065.

Emergency motion on appeal, see rule 8011.

Motion for ex parte relief from stay, see rule 4001.

Verification of—

Complaint seeking temporary restraining order, see rule 7065.

List of multiple proxies and acquisition statement, see rule 2006.

Motions for ex parte relief from stay, see rule 4001.

Petitions and accompanying papers, see rule 1008.

Library References:

C.J.S. Bankruptcy §§ 31 et seq.; Federal Civil Procedure § 260.

West's Key No. Digests, Bankruptcy Ⓒ2162, 2187; Federal Civil Procedure Ⓒ660.1-663, 2750-2848.

Official Forms

Individual's unsworn declaration, see form 1.

Unsworn declaration under penalty of perjury on behalf of corporation or partnership, see form 2.

Committee Note

Subdivision (a). Excepted from the papers which an attorney for a debtor must sign are lists, schedules, statements of financial affairs, statements of executory contracts, Chapter 13 Statements and amendments thereto. Rule 1008 requires that these documents be verified by the debtor. Although the petition must also be verified, counsel for the debtor must sign the petition. See Official Form No. 1. An unrepresented party must sign all papers.

The last sentence of this subdivision authorizes a broad range of sanctions.

The word "document" is used in this subdivision to refer to all papers which the attorney or party is required to sign.

Subdivision (b) extends to all papers filed in cases under the Code the policy of minimizing reliance on the formalities of verification which is reflected in the third sentence of Rule 11 F.R.Civ.P. The second sentence of subdivision (b) permits the substitution of an unsworn declaration for the verification. See 28 U.S.C. § 1746. Rules requiring verification or an affidavit are as follows: Rule 1008, petitions, schedules, statements of financial affairs, Chapter 13 Statements and amendments; Rule 2006(e), list of multiple proxies and statement of facts and circumstances regarding their acquisition; Rule 4001(c), motion for ex parte relief from stay; Rule 7065, incorporating Rule 65(b) F.R.Civ.P. governing issuance of temporary restraining order; Rule 8011(d), affidavit in support of emergency motion on appeal.

Committee Note to 1987 Amendments

The statement of intention of the debtor under § 521(2) of the Code is added to the documents which counsel is not required to sign.

Committee Note to 1991 Amendments

Subdivision (a) is amended to conform to Rule 11 F.R.Civ.P. where appropriate, but also to clarify that it applies to the unnecessary delay or needless increase in the cost of the administration of the case. Deletion of the references to specific statements that are excluded from the scope of this subdivision is stylistic. As used in subdivision (a) of this rule, "statement" is limited to the statement of financial affairs and the statement of intention required to be filed under Rule 1007. Deletion of the reference to the Chapter 13 Statement is consistent with the amendment to Rule 1007(b).

Committee Note to 1997 Amendments

This rule is amended to conform to the 1993 changes to F.R.Civ.P. 11. For an explanation of these amendments, see the advisory committee note to the 1993 amendments to F.R.Civ.P. 11.

A “safe harbor” provision contained in subdivision (c)(1)(A), which prohibits the filing of a motion for sanctions unless the challenged paper is not withdrawn or corrected within a prescribed time after service of the motion, does not apply if the challenged paper is a petition. The filing of a petition has immediate serious consequences, including the imposition of the automatic stay under § 362 of the Code, which may not be avoided by the subsequent withdrawal of the petition. In addition, a petition for relief under chapter 7 or chapter 11 may not be withdrawn unless the court orders dismissal of the case for cause after notice and hearing.

Rule 9012

OATHS AND AFFIRMATIONS

(a) Persons Authorized to Administer Oaths. The following persons may administer oaths and affirmations and take acknowledgments: a bankruptcy judge, clerk, deputy clerk, United States trustee, officer authorized to administer oaths in proceedings before the courts of the United States or under the laws of the state where the oath is to be taken, or a diplomatic or consular officer of the United States in any foreign country.

(b) Affirmation in Lieu of Oath. When in a case under the Code an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof. Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Acknowledgment of power of attorney, see rule 9010.

Administration of oaths and acknowledgments by—

Clerks of court, see § 953 of Title 28, Judiciary and Judicial Procedure.

Justices or judges, see § 459 of Title 28.

Oath defined to include affirmation, see § 1 of Title 1, General Provisions.

Library References:

C.J.S. Bankruptcy §§ 7, 193-195, 373.

West's Key No. Digests, Bankruptcy ⇨2121, 2123, 3001, 3024.

Committee Note

This rule is derived from Rule 43(d) F.R.Civ.P.

The provisions of former Bankruptcy Rule 912(a) relating to who may administer oaths have been deleted as unnecessary. Bankruptcy judges and the clerks and deputy clerks of bankruptcy courts are authorized by statute to administer oaths and affirmations and to take acknowledgments. 28 U.S.C. §§ 459, 953. A person designated to preside at the meeting of creditors has authority under rule 2003(b)(1) to administer the oath. Administration of the oath at a deposition is governed by Rule 7028.

Committee Note to 1987 Amendments

Subdivision (a) has been added to the rule to authorize bankruptcy judges and clerks to administer oaths.

Committee Note to 1991 Amendments

This rule is amended to conform to the 1986 amendment to § 343 which provides that the United States trustee may administer the oath to the debtor

at the § 341 meeting. This rule also allows the United States trustee to administer oaths and affirmations and to take acknowledgments in other situations. This amendment also affects Rule 9010(c) relating to the acknowledgment of a power of attorney. The words "United States trustee" include a designee of the United States trustee pursuant to Rule 9001 and § 102(9) of the Code.

Rule 9013

MOTIONS: FORM AND SERVICE

A request for an order, except when an application is authorized by these rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion other than one which may be considered ex parte shall be served by the moving party on the trustee or debtor in possession and on those entities specified by these rules or, if service is not required or the entities to be served are not specified by these rules, the moving party shall serve the entities the court directs.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Library References:

C.J.S. Bankruptcy § 5.

West's Key No. Digests, Bankruptcy Ⓒ2127.1.

Committee Note

This rule is derived from Rule 5(a) and Rule 7(b)(1) F.R.Civ.P. Except when an application is specifically authorized by these rules, for example an application under rule 2014 for approval of the employment of a professional, all requests for court action must be made by motion.

Rule 9014

CONTESTED MATTERS

In a contested matter in a case under the Code not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court orders an answer to a motion. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004, and, unless the court otherwise directs, the following rules shall apply: 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056, 7064, 7069, and 7071. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. An entity that desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027 for the taking of a deposition before an adversary proceeding. The clerk shall give notice to the parties of the entry of any order directing that additional rules of Part VII are applicable or that certain of the rules of Part VII are not applicable. The notice shall be given within such time as is necessary to afford the parties a reasonable opportunity to comply with the procedures made applicable by the order.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 29, 1999, eff. Dec. 1, 1999.

Cross References

Contested matters—

Assumption, rejection, or assignment of executory contract or unexpired lease, or proceeding to require trustee to act, see rule 6006.

Avoidance by debtor of transfers of exempt property, see rule 4003.

Dismissal or conversion to another chapter, see rule 1017.

Objection to confirmation of plan, see rule 3020.

Relief from automatic stay, see rule 4001.

Request for use of cash collateral, see rule 4001.

Effect of amendment of Federal Rules of Civil Procedure, see rule 9032.

Meanings of words in Federal Rules of Civil Procedure when applicable, see rule 9002.

Motions; form and service, see rule 9013.

Library References:

C.J.S. Bankruptcy § 5.

West's Key No. Digests, Bankruptcy Ⓒ2127.1.

Committee Note

Rules 1017(d), 3020(b)(1), 4001(a), 4003(d), and 6006(a), which govern respectively dismissal or conversion of a case, objections to confirmation of a plan, relief from the automatic stay and the use of cash collateral, avoidance of a lien under § 522(f) of the Code, and the assumption or rejection of executory contracts or unexpired leases, specifically provide that litigation under those rules shall be as provided in Rule 9014. This rule also governs litigation in other contested matters.

Whenever there is an actual dispute, other than an adversary proceeding, before the bankruptcy court, the litigation to resolve that dispute is a contested matter. For example, the filing of an objection to a proof of claim, to a claim of exemption, or to a disclosure statement creates a dispute which is a contested matter. Even when an objection is not formally required, there may be a dispute. If a party in interest opposes the amount of compensation sought by a professional, there is a dispute which is a contested matter.

When the rules of Part VII are applicable to a contested matter, reference in the Part VII rules to adversary proceedings is to be read as a reference to a contested matter. See Rule 9002(1).

Committee Note to 1999 Amendments

This rule is amended to delete Rule 7062 from the list of Part VII rules that automatically apply in a contested matter.

Rule 7062 provides that Rule 62 F.R.Civ.P., which governs stays of proceedings to enforce a judgment, is applicable in adversary proceedings. The provisions of Rule 62, including the ten-day automatic stay of the enforcement of a judgment provided by Rule 62(a) and the stay as a matter of right by posting a supersedeas bond provided in Rule 62(d), are not appropriate for most orders granting or denying motions governed by Rule 9014.

Although Rule 7062 will not apply automatically in contested matters, the amended rule permits the court, in its discretion, to order that Rule 7062 apply in a particular matter, and Rule 8005 gives the court discretion to issue a stay or any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest. In addition,

amendments to Rules 3020, 4001, 6004, and 6006 automatically stay certain types of orders for a period of ten days, unless the court orders otherwise.

Rule 9015

JURY TRIALS

(a) Applicability of Certain Federal Rules of Civil Procedure. Rules 38, 39, and 47–51 F.R.Civ.P., and Rule 81(c) F.R.Civ.P. insofar as it applies to jury trials, apply in cases and proceedings, except that a demand made pursuant to Rule 38(b) F.R.Civ.P. shall be filed in accordance with Rule 5005.

(b) Consent to Have Trial Conducted by Bankruptcy Judge. If the right to a jury trial applies, a timely demand has been filed pursuant to Rule 38(b) F.R.Civ.P., and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) by jointly or separately filing a statement of consent within any applicable time limits specified by local rule.

[Adopted Apr. 11, 1997, eff. Dec. 1, 1997.]

Committee Note

This rule provides procedures relating to jury trials. This rule is not intended to expand or create any right to trial by jury where such right does not otherwise exist.

Rule 9016

SUBPOENA

Rule 45 F.R.Civ.P. applies in cases under the Code.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Compelling attendance of witnesses by use of subpoena—

Deposition upon oral examination, see rule 7030.

Deposition upon written questions, see rule 7031.

Examination of debtor—

Apprehension and removal of debtor to compel attendance, see rule 2005.

Compelling attendance for examination and production of documentary evidence, see rule 2004.

On issue of nonpayment of debts in involuntary cases, see rule 1012.

Library References:

C.J.S. Bankruptcy § 204; Federal Civil Procedure §§ 582 et seq.

West's Key No. Digests, Bankruptcy ⇨3043; Federal Civil Procedure ⇨1353.1, 1354, 1456.

Committee Note

Although Rule 7004(d) authorizes nationwide service of process, Rule 45 F.R.Civ.P. limits the subpoena power to the judicial district and places outside the district which are within 100 miles of the place of trial or hearing.

Rule 9017**EVIDENCE**

The Federal Rules of Evidence and rules 43, 44 and 44.1 F.R.Civ.P. apply in cases under the Code.

Library References:

C.J.S. Bankruptcy §§ 32, 92, 93, 162, 163, 283, 284, 308 et seq.; Witnesses §§ 315 et seq., 366 et seq., 417 et seq.
West's Key No. Digests, Bankruptcy ⌘2163, 2439(1), 2440, 2725.1, 2728, 2925.1, 2929, 3314.1, 3318.1, 3386, 3387.1; Witnesses ⌘224-310.

Committee Note

Sections 251 and 252 of Public Law 95-598, amended rule 1101 of the Federal Rules of Evidence to provide that the Federal Rules of Evidence apply in bankruptcy courts and to any case or proceeding under the Code. Rules 43, 44 and 44.1 of the F.R.Civ.P., which supplement the Federal Rules of Evidence, are by this rule made applicable to cases under the Code.

Examples of bankruptcy rules containing matters of an evidentiary nature are: Rule 2011, evidence of debtor retained in possession; Rule 3001(f), proof of claim constitutes prima facie evidence of the amount and validity of a claim; and Rule 5007(c), sound recording of court proceedings constitutes the record of the proceedings.

Rule 9018**SECRET, CONFIDENTIAL, SCANDALOUS,
OR DEFAMATORY MATTER**

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code, or (3) to protect governmental matters that are made confidential by statute or regulation. If an order is entered under this rule without notice, any entity affected thereby may move to vacate or modify the order, and after a hearing on notice the court shall determine the motion.

Cross References

Motions; form and service, see rule 9013.

Library References:

C.J.S. Bankruptcy § 5; Records §§ 34 et seq.
West's Key No. Digests, Bankruptcy ⌘2127.1; Records ⌘30-68.

Committee Note

This rule provides the procedure for invoking the court's power under § 107 of the Code.

Rule 9019

COMPROMISE AND ARBITRATION

(a) Compromise. On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

(b) Authority to Compromise or Settle Controversies Within Classes. After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice.

(c) Arbitration. On stipulation of the parties to any controversy affecting the estate the court may authorize the matter to be submitted to final and binding arbitration.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993.

Cross References

Motions; form and service, see rule 9013.

Library References:

C.J.S. Bankruptcy §§ 205, 206, 390.

West's Key No. Digests, Bankruptcy ☞3031, 3032.1, 3033, 3555.

Committee Note

Subdivisions (a) and (c) of this rule are essentially the same as the provisions of former Bankruptcy Rule 919 and subdivision (b) is the same as former Rule 8-514(b), which was applicable to railroad reorganizations. Subdivision (b) permits the court to deal efficiently with a case in which there may be a large number of settlements.

Committee Note to 1991 Amendments

This rule is amended to enable the United States trustee to object or otherwise be heard in connection with a proposed compromise or settlement and otherwise to monitor the progress of the case.

Committee Note to 1993 Amendments

Subdivision (a) is amended to conform to the language of § 102(1) of the Code. Other amendments are stylistic and make no substantive change.

Rule 9020

CONTEMPT PROCEEDINGS

[Text of Rule 9020 effective until December 1, 2001, absent contrary Congressional action. See, also, revised text, post.]

(a) Contempt Committed in Presence of Bankruptcy Judge. Contempt committed in the presence of a bankruptcy judge may be determined summarily by a bankruptcy judge. The order of contempt shall recite the facts and shall be signed by the bankruptcy judge and entered of record.

(b) Other Contempt. Contempt committed in a case or proceeding pending before a bankruptcy judge, except when determined as provided in subdivision (a) of this rule, may be determined by the bankruptcy judge only after a hearing on notice. The notice shall be in writing, shall state the essential facts constituting the contempt charged and describe the contempt as criminal or civil and shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense. The notice may be given on the court's own initiative or on application of the United States attorney or by an attorney appointed by the court for that purpose. If the contempt charged involves disrespect to or criticism of a bankruptcy judge, that judge is disqualified from presiding at the hearing except with the consent of the person charged.

(c) Service and Effective Date of Order; Review. The clerk shall serve forthwith a copy of the order of contempt on the entity named therein. The order shall be effective 10 days after service of the order and shall have the same force and effect as an order of contempt entered by the district court unless, within the 10 day period, the entity named therein serves and files objections prepared in the manner provided in Rule 9033(b). If timely objections are filed, the order shall be reviewed as provided in Rule 9033.

(d) Right to Jury Trial. Nothing in this rule shall be construed to impair the right to jury trial whenever it otherwise exists.

[Text of Rule 9020 effective December 1, 2001, absent contrary Congressional action. See, also, former text, ante.]

Rule 9014 governs a motion for an order of contempt made by the United States trustee or a party in interest.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 24, 2001, eff. Dec. 1, 2001, absent contrary Congressional action.

Cross References

Contempts, see §§ 401 et seq. and 3691 et seq. of Title 18, Crimes and Criminal Procedure.
Power of court to punish persons for contempts, see § 105 of this title.

Library References:

C.J.S. Bankruptcy §§ 21, 101, 204.
West's Key No. Digests, Bankruptcy Ⓒ2134, 2465(1-3), 2466, 3046(2).

Committee Note

Section 1481 of Title 28 provides that a bankruptcy court "may not . . . punish a criminal contempt not committed in the presence of the judge of the court or warranting a punishment of imprisonment." Rule 9020 does not enlarge the power of bankruptcy courts.

Subdivision (a) is adapted from former Bankruptcy Rule 920 and Rule 42 F.R.Crim.P. Paragraph (1) of the subdivision permits summary imposition of punishment for contempt if the conduct is in the presence of the court and is of such nature that the conduct "obstruct[s] the administration of justice." See 18 U.S.C. § 401(a). Cases interpreting Rule 42(a) F.R.Crim.P. have held that when criminal contempt is in question summary disposition should be the exception: summary disposition should be reserved for situations where it is necessary to protect the judicial institution. 3 Wright, *Federal Practice & Procedure—Criminal* § 707 (1969). Those cases are equally pertinent to the

application of this rule and, therefore, contemptuous conduct in the presence of the judge may often be punished only after the notice and hearing requirements of subdivision (b) are satisfied.

If the bankruptcy court concludes it is without power to punish or to impose the proper punishment for conduct which constitutes contempt, subdivision (a)(3) authorizes the bankruptcy court to certify the matter to the district court.

Subdivision (b) makes clear that when a person has a constitutional or statutory right to a jury trial in a criminal contempt matter this rule in no way affects that right. See *Frank v. United States*, 395 U.S. 147 (1969).

The Federal Rules of Civil Procedures do not specifically provide the procedure for the imposition of civil contempt sanctions. The decisional law governing the procedure for imposition of civil sanctions by the district courts will be equally applicable to the bankruptcy courts.

Committee Note to 1987 Amendments

The United States Bankruptcy Courts, as constituted under the Bankruptcy Reform Act of 1978, were courts of law, equity, and admiralty with an inherent contempt power, but former 28 U.S.C. § 1481 restricted the criminal contempt power of bankruptcy judges. Under the 1984 amendments, bankruptcy judges are judicial officers of the district court. 28 U.S.C. §§ 151, 152(a)(1). There are no decisions by the courts of appeals concerning the authority of bankruptcy judges to punish for either civil or criminal contempt under the 1984 amendments. This rule, as amended, recognizes that bankruptcy judges may not have the power to punish for contempt.

Sound judicial administration requires that the initial determination of whether contempt has been committed should be made by the bankruptcy judge. If timely objections are not filed to the bankruptcy judge's order, the order has the same force and effect as an order of the district court. If objections are filed within 10 days of service of the order, the district court conducts a de novo review pursuant to Rule 9033 and any order of contempt is entered by the district court on completion of the court's review of the bankruptcy judge's order.

Committee Note to 1991 Amendments

The words "with the clerk" in subdivision (c) are deleted as unnecessary. See Rules 5005(a) and 9001(3).

Committee Note to 2001 Amendments

The amendments to this rule cover a motion for an order of contempt filed by the United States trustee or a party in interest. This rule, as amended, does not address a contempt proceeding initiated by the court sua sponte.

Whether the court is acting on motion under this rule or is acting sua sponte, these amendments are not intended to extend, limit, or otherwise affect either the contempt power of a bankruptcy judge or the role of the district judge regarding contempt orders. Issues relating to the contempt

power of bankruptcy judges are substantive and are left to statutory and judicial development, rather than procedural rules.

This rule, as amended in 1987, delayed for ten days from service the effectiveness of a bankruptcy judge's order of contempt and rendered the order subject to de novo review by the district court. These limitations on contempt orders were added to the rule in response to the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, which provides that bankruptcy judges are judicial officers of the district court, but does not specifically mention contempt power. See 28 U.S.C. § 151. As explained in the committee note to the 1987 amendments to this rule, no decisions of the courts of appeals existed concerning the authority of a bankruptcy judge to punish for either civil or criminal contempt under the 1984 Act and, therefore, the rule as amended in 1987 "recognizes that bankruptcy judges may not have the power to punish for contempt." Committee Note to 1987 Amendments to Rule 9020.

Since 1987, several courts of appeals have held that bankruptcy judges have the power to issue civil contempt orders. See, e.g., *Matter of Terrebonne Fuel and Lube, Inc.*, 108 F.3d 609 (5th Cir. 1997); *In re Rainbow Magazine, Inc.*, 77 F.3d 278 (9th Cir. 1996). Several courts have distinguished between a bankruptcy judge's civil contempt power and criminal contempt power. See, e.g., *Matter of Terrebonne Fuel and Lube, Inc.*, 108 F.3d at 613, n. 3 ("[a]lthough we find that bankruptcy judge's [sic] can find a party in civil contempt, we must point out that bankruptcy courts lack the power to hold persons in criminal contempt."). For other decisions regarding criminal contempt power, see, e.g., *In re Ragar*, 3 F.3d 1174 (8th Cir. 1993); *Matter of Hipp, Inc.*, 895 F.2d 1503 (5th Cir. 1990). To the extent that Rule 9020, as amended in 1987, delayed the effectiveness of civil contempt orders and required de novo review by the district court, the rule may have been unnecessarily restrictive in view of judicial decisions recognizing that bankruptcy judges have the power to hold parties in civil contempt.

Subdivision (d), which provides that the rule shall not be construed to impair the right to trial by jury, is deleted as unnecessary and is not intended to deprive any party of the right to a jury trial when it otherwise exists.

CHANGES MADE AFTER PUBLICATION AND COMMENTS

No changes were made in the text of the proposed amendments. Stylistic changes were made to the Committee Note.

Rule 9021

ENTRY OF JUDGMENT

Except as otherwise provided herein, Rule 58 F.R.Civ.P. applies in cases under the Code. Every judgment entered in an adversary proceeding or contested matter shall be set forth on a separate document. A judgment is effective when entered as provided in Rule 5003. The reference in Rule 58 F.R.Civ.P. to Rule 79(a) F.R.Civ.P. shall be read as a reference to Rule 5003 of these rules.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Entry of judgment on appeal, see rule 8016.

Findings by court, see rule 7052.

Judgments rendered by district court—

Effect as lien on local property, see § 1962 of Title 28, Judiciary and Judicial Procedure.

Interest allowed on money judgment, see § 1961 of Title 28.

Registration of final judgments in other districts, see § 1963 of Title 28.

Library References:

C.J.S. Bankruptcy §§ 35, 94, 163, 283, 311 et seq.; Federal Civil Procedure §§ 1227 et seq. West's Key No. Digests, Bankruptcy Ⓒ2164.1, 2442, 2729, 2932, 3318.1, 3387.1; Federal Civil Procedure Ⓒ2621-2628.

Committee Note

Subdivision (a). This rule is derived from Rule 58 F.R.Civ.P. The requirement that a judgment entered in an adversary proceeding or contested matter be set forth on a separate document is to eliminate uncertainty as to whether an opinion or memorandum of the court is a judgment. There is no sound reason to require that every order in a case under the Code be evidenced by a separate document.

Subdivision (b) establishes a procedure for entering a judgment of a bankruptcy court for the recovery of money or property in an index of judgments kept by the clerk of the district court. It clarifies the availability of the same remedies for the enforcement of a bankruptcy court judgment as those provided for the enforcement of a district court judgment. See 28 U.S.C. §§ 1961-63. When indexed in accordance with subdivision (b) of this rule a judgment of the bankruptcy court may be found by anyone searching for liens of record in the judgment records of the district court. Certification of a copy of the judgment to the clerk of the district court provides a basis for registration of the judgment pursuant to 28 U.S.C. § 1963 in any other district. When so registered, the judgment may be enforced by issuance of execution and orders for supplementary proceedings that may be served anywhere within the state where the registering court sits. See 7 Moore, Federal Practice 2409-11 (2d ed. 1971). The procedures available in the district court are not exclusive, however, and the holder of a judgment entered by the bankruptcy court may use the remedies under Rules 7069 and 7070 even if the judgment is indexed by the clerk of the district court.

Subdivision (c) makes it clear that when a district court hears a matter reserved to it by 28 U.S.C. §§ 1471, 1481, its judgments are entered in the district court's civil docket and in the docket of the bankruptcy court. When the district court acts as an appellate court, Rule 8016(a) governs the entry of judgments on appeal.

Committee Note to 1987 Amendments

Former subdivision (a) was derived from Rule 58 F.R.Civ.P. As amended, Rule 9021 adopts Rule 58. The reference in Rule 58 to Rule 79(a) F.R.Civ.P. is to be read as a reference to Rule 5003.

Rule 9022

NOTICE OF JUDGMENT OR ORDER

[Text of paragraph (a) effective until December 1, 2001, absent contrary Congressional action. See, also, revised text, post.]

(a) Judgment or Order of Bankruptcy Judge. Immediately on the entry of a judgment or order the clerk shall serve a notice of the entry by mail in the manner provided by Rule 7005 on the contesting parties and on other entities as the court directs. Unless the case is a chapter 9 municipality case, the clerk shall forthwith transmit to the United States trustee a copy of the judgment or order. Service of the notice shall be noted in the docket. Lack of notice of the entry does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002.

[Text of paragraph (a) effective December 1, 2001, absent contrary Congressional action. See, also, former text, ante.]

(a) Judgment or Order of Bankruptcy Judge. Immediately on the entry of a judgment or order the clerk shall serve a notice of entry in the manner provided in Rule 5(b) F. R. Civ. P. on the contesting parties and on other entities as the court directs. Unless the case is a chapter 9 municipality case, the clerk shall forthwith transmit to the United States trustee a copy of the judgment or order. Service of the notice shall be noted in the docket. Lack of notice of the entry does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002.

(b) Judgment or Order of District Judge. Notice of a judgment or order entered by a district judge is governed by Rule 77(d) F.R.Civ.P. Unless the case is a chapter 9 municipality case, the clerk shall forthwith transmit to the United States trustee a copy of a judgment or order entered by a district judge.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 24, 2001, eff. Dec. 1, 2001, absent contrary Congressional action.

Cross References

Entry of judgment; district court record of judgment, see rule 9021.
Notice of judgment on appeal, see rule 8016.

Library References:

C.J.S. Bankruptcy §§ 35, 94, 163, 283, 311 et seq.; Federal Civil Procedure §§ 1227 et seq. West's Key No. Digests, Bankruptcy ⇨2164.1, 2442, 2729, 2932, 3318.1, 3387.1; Federal Civil Procedure ⇨2621-2628.

Committee Note

Subdivision (a) of this rule is an adaptation of Rule 77(d) F.R.Civ.P.

Subdivision (b) complements Rule 9021(b). When a district court acts as an appellate court, Rule 8016(b) requires the clerk to give notice of the judgment on appeal.

Committee Note to 1991 Amendments

This rule is amended to enable the United States trustee to be informed of all developments in the case so that administrative and supervisory functions provided in 28 U.S.C. § 586(a) may be performed.

2001 Amendments

Rule 5(b) F. R. Civ. P., which is made applicable in adversary proceedings by Rule 7005, is being restyled and amended to authorize service by electronic means—or any other means not otherwise authorized under Rule 5(b)—if consent is obtained from the person served. The amendment to Rule 9022(a) authorizes the clerk to serve notice of entry of a judgment or order by electronic means if the person served consents, or to use any other means of service authorized under Rule 5(b), including service by mail. This amendment conforms to the amendments made to Rule 77(d) F.R. Civ. P.

Rule 9023**NEW TRIALS; AMENDMENT OF JUDGMENTS**

Rule 59 F.R.Civ.P. applies in cases under the Code, except as provided in Rule 3008.

Cross References

Amendment of findings by court, see rule 7052.

Effect of motion under this rule on time for appeal, see rule 8002.

Enlargement of ten-day period for motion for new trial not permitted, see rule 9006.

Time for service of opposing affidavits to motion for new trial, see rule 9006.

Library References:

C.J.S. Bankruptcy §§ 95, 163, 283, 286, 313 et seq.; Federal Civil Procedure §§ 1057 et seq.

West's Key No. Digests, Bankruptcy ⅈ2164.1, 2443, 2729, 2933, 3320.1–3322, 3387.1; Federal Civil Procedure ⅈ2311–2377.

Committee Note

Rule 59 F.R.Civ.P. regulates motions for a new trial and amendment of judgment. Those motions must be served within 10 days of the entry of judgment. No similar time limit is contained in Rule 3008 which governs reconsideration of claims.

Rule 9024**RELIEF FROM JUDGMENT OR ORDER**

Rule 60 F.R.Civ.P. applies in cases under the Code except that (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(b), (2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within the time allowed by § 727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by § 1144, § 1230, or § 1330.

Amended Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Enlargement of time for motion for relief from judgment or order not permitted, see rule 9006.

Motions; form and service, see rule 9013.

Reconsideration of allowance or disallowance of claims, see rule 3008.

Reopening cases, see rule 5010.

Revocation of discharges under individual debt adjustment plan, see § 1328 of this title.

Setting aside judgment by default, see rule 7055.

Library References:

C.J.S. Bankruptcy §§ 95, 163, 283, 313 et seq.; Federal Civil Procedure §§ 1233 et seq.

West's Key No. Digests, Bankruptcy ⇨2164.1, 2443, 2729, 2932, 3320.1-3322, 3387.1;

Federal Civil Procedure ⇨2641-2662.

Committee Note

Motions to reopen cases are governed by Rule 5010. Reconsideration of orders allowing and disallowing claims is governed by Rule 3008. For the purpose of this rule all orders of the bankruptcy court are subject to Rule 60 F.R.Civ.P.

Pursuant to § 727(e) of the Code a complaint to revoke a discharge must be filed within one year of the entry of the discharge or, when certain grounds of revocation are asserted, the later of one year after the entry of the discharge or the date the case is closed. Under § 1144 and § 1330 of the Code a party must file a complaint to revoke an order confirming a chapter 11 or 13 plan within 180 days of its entry. Clauses (2) and (3) of this rule make it clear that the time periods established by §§ 727(e), 1144 and 1330 of the Code may not be circumvented by the invocation of F.R.Civ.P. 60(b).

Committee Note to 1991 Amendments

Clause (3) is amended to include a reference to § 1230 of the Code which contains time limitations relating to revocation of confirmation of a chapter 12 plan. The time periods prescribed by § 1230 may not be circumvented by the invocation of F.R.Civ.P. 60(b).

Rule 9025**SECURITY: PROCEEDINGS AGAINST SURETIES**

Whenever the Code or these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court, and liability may be determined in an adversary proceeding governed by the rules in Part VII.

Cross References

Bonds—

Deposit or investment by trustee of money of estates, see § 345 of this title.

Indemnification bond in involuntary cases, see § 303 of this title.

Qualification to serve as trustee, see § 322 of this title.

Enforcement of bond or undertaking on injunction against surety, see rule 7065.

Security defined, see § 101 of this title.

Library References:

C.J.S. Principal and Surety §§ 82 et seq.
West's Key No. Digests, Principal and Surety Ⓒ59 et seq.

Committee Note

This rule is an adaptation of Rule 65.1 F.R.Civ.P. and applies to any surety on a bond given pursuant to § 303(e) of the Code, Rules 2001, 2010, 5008, 7062, 7065, 8005, or any other rule authorizing the giving of such security.

Rule 9026**EXCEPTIONS UNNECESSARY**

Rule 46 F.R.Civ.P. applies in cases under the Code.

Library References:

C.J.S. Bankruptcy § 5; Federal Civil Procedure § 941.
West's Key No. Digests, Bankruptcy Ⓒ2127.1; Federal Civil Procedure Ⓒ2017.1.

Rule 9027**REMOVAL****(a) Notice of Removal.**

(1) *Where Filed; Form and Content.* A notice of removal shall be filed with the clerk for the district and division within which is located the state or federal court where the civil action is pending. The notice shall be signed pursuant to Rule 9011 and contain a short and plain statement of the facts which entitle the party filing the notice to remove, contain a statement that upon removal of the claim or cause of action the proceeding is core or non-core and, if non-core, that the party filing the notice does or does not consent to entry of final orders or judgment by the bankruptcy judge, and be accompanied by a copy of all process and pleadings.

(2) *Time for Filing; Civil Action Initiated Before Commencement of the Case Under the Code.* If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

(3) *Time for Filing; Civil Action Initiated After Commencement of the Case Under the Code.* If a case under the Code is pending when a claim or cause of action is asserted in another court, a notice of removal may be filed with the clerk only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.

(b) Notice. Promptly after filing the notice of removal, the party filing the notice shall serve a copy of it on all parties to the removed claim or cause of action.

(c) Filing in Non-bankruptcy Court. Promptly after filing the notice of removal, the party filing the notice shall file a copy of it with the clerk of the court from which the claim or cause of action is removed. Removal of the claim or cause of action is effected on such filing of a copy of the notice of removal. The parties shall proceed no further in that court unless and until the claim or cause of action is remanded.

(d) Remand. A motion for remand of the removed claim or cause of action shall be governed by Rule 9014 and served on the parties to the removed claim or cause of action.

(e) Procedure After Removal.

(1) After removal of a claim or cause of action to a district court the district court or, if the case under the Code has been referred to a bankruptcy judge of the district, the bankruptcy judge, may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the court from which the claim or cause of action was removed or otherwise.

(2) The district court or, if the case under the Code has been referred to a bankruptcy judge of the district, the bankruptcy judge, may require the party filing the notice of removal to file with the clerk copies of all records and proceedings relating to the claim or cause of action in the court from which the claim or cause of action was removed.

(3) Any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, shall file a statement admitting or denying any allegation in the notice of removal that upon removal of the claim or cause of action the proceeding is core or non-core. If the statement alleges that the proceeding is non-core, it shall state that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. A statement required by this paragraph shall be signed pursuant to Rule 9011 and shall be filed not later than 10 days after the filing of the notice of removal. Any party who files a statement pursuant to this paragraph shall mail a copy to every other party to the removed claim or cause of action.

(f) Process After Removal. If one or more of the defendants has not been served with process, the service has not been perfected prior to removal, or the process served proves to be defective, such process or service may be completed or new process issued pursuant to Part VII of these rules. This subdivision shall not deprive any defendant on whom process is served after removal of the defendant's right to move to remand the case.

(g) Applicability of Part VII. The rules of Part VII apply to a claim or cause of action removed to a district court from a federal or state court and govern procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, the defendant shall answer or present the other defenses or objections available under the rules of Part VII within 20 days following the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief on which the action or proceeding is based, or within 20 days following the service of summons on such

initial pleading, or within five days following the filing of the notice of removal, whichever period is longest.

(h) Record Supplied. When a party is entitled to copies of the records and proceedings in any civil action or proceeding in a federal or a state court, to be used in the removed civil action or proceeding, and the clerk of the federal or state court, on demand accompanied by payment or tender of the lawful fees, fails to deliver certified copies, the court may, on affidavit reciting the facts, direct such record to be supplied by affidavit or otherwise. Thereupon the proceedings, trial and judgment may be had in the court, and all process awarded, as if certified copies had been filed.

(i) Attachment or Sequestration; Securities. When a claim or cause of action is removed to a district court, any attachment or sequestration of property in the court from which the claim or cause of action was removed shall hold the property to answer the final judgment or decree in the same manner as the property would have been held to answer final judgment or decree had it been rendered by the court from which the claim or cause of action was removed. All bonds, undertakings, or security given by either party to the claim or cause of action prior to its removal shall remain valid and effectual notwithstanding such removal. All injunctions issued, orders entered and other proceedings had prior to removal shall remain in full force and effect until dissolved or modified by the court.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991.

Cross References

Removal of actions, see §§ 1446 to 1450 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy §§ 23–25.

West's Key No. Digests, Bankruptcy ⇨2086.1–2091.

Committee Note

Under 28 U.S.C. § 1478(a) “any claim or cause of action in a civil action, other than a proceeding before the United States Tax Court or a civil action by a Government unit to enforce [a] . . . regulatory or police power” may be removed “if the bankruptcy courts have jurisdiction over such claim or cause of action.” This rule specifies how removal is accomplished, the procedure thereafter, and the procedure to request remand of the removed claim or cause of action. If the claim or cause of action which is removed to the bankruptcy court is subject to the automatic stay of § 362 of the Code, the litigation may not proceed in the bankruptcy court until relief from the stay is granted.

The subdivisions of this rule conform substantially to 28 U.S.C. §§ 1446–1450 and Rule 81(a) F.R.Civ.P. pertaining to removal to the district courts.

Subdivision (a)(1) is derived from 28 U.S.C. § 1446(a).

Subdivisions (a)(2) and (a)(3) are derived from paragraphs one and two of 28 U.S.C. § 1446(b). Timely exercise of the right to remove is as important in bankruptcy cases as in removals from a state court to a district court.

Subdivision (a)(2) governs the situation in which there is litigation pending and a party to the litigation becomes a debtor under the Code. Frequently, removal would be of little utility in such cases because the

pending litigation will be stayed by § 362(a) on commencement of the case under the Code. As long as the stay remains in effect there is no reason to impose a time limit for removal to the bankruptcy court and, therefore, clause (B) of subdivision (a)(2) provides that a removal application may be filed within 30 days of entry of an order terminating the stay. Parties to stayed litigation will not be required to act immediately on commencement of a case under the Code to protect their right to removal. If the pending litigation is not stayed by § 362(a) of the Code, the removal application must ordinarily be filed within 90 days of the order for relief. Clause (C) contains an alternative period for a chapter 11 case. If a trustee is appointed, the removal application may be filed within 30 days of the trustee's qualification, provided that the removal application is filed not more than 180 days after the order for relief.

The removal application must be filed within the longest of the three possible periods. For example, in a chapter 11 case if the 90 day period expires but a trustee is appointed shortly thereafter, the removal application may be filed within 30 days of the trustee's qualification but not later than 180 days after the order for relief. Nevertheless, if the claim or cause of action in the civil action is stayed under § 362, the application may be filed after the 180 day period expires, provided the application is filed within 30 days of an order terminating the stay.

Subdivision (a)(3) applies to a situation in which the case under the Code is pending when the removable claim or cause of action is asserted in a civil action initiated in other than the bankruptcy court. The time for filing the application for removal begins to run on receipt of the first pleading containing the removable claim or cause of action. Only litigation not stayed by the code or by court order may properly be initiated after the case under the Code is commenced. See *e.g.*, § 362(a).

Subdivision (b). With one exception, this subdivision is the same as 28 U.S.C. § 1446(d). The exemption from the bond requirement is enlarged to include a trustee or debtor in possession. Complete exemption from the bond requirement for removal is appropriate because of the limited resources which may be available at the beginning of a case and the small probability that an action will be improperly removed.

Recovery on the bond is permitted only when the removal was improper. If the removal is proper but the bankruptcy court orders the action remanded on equitable grounds, 28 U.S.C. § 1478(b), there is no recovery on the bond.

Subdivisions (c) and (d) are patterned on 28 U.S.C. § 1446(e).

Subdivision (e). There is no provision in the Federal Rules of Civil Procedure for seeking remand. The first sentence of this subdivision requires that a request for remand be by motion and that the moving party serve all other parties; however, no hearing is required. In recognition of the intrusion of the removal practice on the state and federal courts from which claims or causes of action are removed, the subdivision directs the bankruptcy court to decide remand motions as soon as practicable. The last sentence of this subdivision is derived from 28 U.S.C. § 1446(c).

Subdivisions (f) and (g), with appropriate changes to conform them to the bankruptcy contest, are the same as 28 U.S.C. § 1447(a) and (b) and 28 U.S.C. § 1448, respectively.

Subdivisions (h) and (i) are taken from Rule 81(c) F.R.Civ.P.

Subdivisions (j) and (k) are derived from 28 U.S.C. § 1449 and § 1450, respectively.

Remand orders of bankruptcy judges are not appealable. 28 U.S.C. § 1478(b).

This rule does not deal with the question whether a single plaintiff or defendant may remove a claim or cause of action if there are two or more plaintiffs or defendants. See 28 U.S.C. § 1478.

Committee Note to 1987 Amendments

Section 1452 of title 28, with certain exceptions, provides for removal of claims or causes of action in civil actions pending in state or federal courts when the claim or cause of action is within the jurisdiction conferred by 28 U.S.C. § 1334. An order granting or denying a motion for remand is not appealable. 28 U.S.C. § 1452(b). Under subdivision (e), as amended, the district court must enter the order on the remand motion; however, the bankruptcy judge conducts the initial hearing on the motion and files a report and recommendation. The parties may file objections. Review of the report and recommendation is pursuant to Rule 9033.

Subdivision (f) has been amended to provide that if there has been a referral pursuant to 28 U.S.C. § 157(a) the bankruptcy judge will preside over the removed civil action.

Subdivision (i) has been abrogated consistent with the abrogation of Rule 9015.

Committee Note to 1991 Amendments

The abrogation of subdivision (b) is consistent with the repeal of 28 U.S.C. § 1446(d). The changes substituting the notice of removal for the application for removal conform to the 1988 amendments to 28 U.S.C. § 1446.

Rules 7008(a) and 7012(b) were amended in 1987 to require parties to allege in pleadings whether a proceeding is core or non-core and, if non-core, whether the parties consent to the entry of final orders or judgment by the bankruptcy judge. Subdivision (a)(1) is amended and subdivision (f)(3) is added to require parties to a removed claim or cause of action to make the same allegations. The party filing the notice of removal must include the allegation in the notice and the other parties who have filed pleadings must respond to the allegation in a separate statement filed within 10 days after removal. However, if a party to the removed claim or cause of action has not filed a pleading prior to removal, there is no need to file a separate statement under subdivision (f)(3) because the allegation must be included in the responsive pleading filed pursuant to Rule 7012(b).

Subdivision (e), redesignated as subdivision (d), is amended to delete the restriction that limits the role of the bankruptcy court to the filing of a report and recommendation for disposition of a motion for remand under 28 U.S.C. § 1452(b). This amendment is consistent with § 309(c) of the Judicial Improvements Act of 1990, which amended § 1452(b) so that it allows an appeal to the district court of a bankruptcy court's order determining a motion for remand. This subdivision is also amended to clarify that the motion is a contested matter governed by Rule 9014. The words "filed with the clerk" are deleted as unnecessary. See Rules 5005(a) and 9001(3).

Rule 9028**DISABILITY OF A JUDGE**

Rule 63 F.R.Civ.P. applies in cases under the Code.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Library References:

C.J.S. Bankruptcy § 7; Judges §§ 35-38, 66-68.

West's Key No. Digests, Bankruptcy Ⓒ2123; Judges Ⓒ21, 32.

Committee Note

This rule is an adaptation of Rule 63 F.R.Civ.P.

Committee Note to 1987 Amendments

Rule 9028 has been changed to adopt the procedures contained in Rule 63 of the Federal Rules of Civil Procedure for substituting a judge in the event of disability.

Rule 9029**LOCAL BANKRUPTCY RULES: PROCEDURE WHEN
THERE IS NO CONTROLLING LAW****(a) Local Bankruptcy Rules**

(1) Each district court acting by a majority of its district judges may make and amend rules governing practice and procedure in all cases and proceedings within the district court's bankruptcy jurisdiction which are consistent with—but not duplicative of—Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms. Rule 83 F.R.Civ.P. governs the procedure for making local rules. A district court may authorize the bankruptcy judges of the district, subject to any limitation or condition it may prescribe and the requirements of 83 F.R.Civ.P., to make and amend rules of practice and procedure which are consistent with—but not duplicative of—Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms. Local rules must conform to any uniform numbering system prescribed by the Judicial Conference of the United States.

(2) A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

(b) Procedure When There is No Controlling Law. A judge may regulate practice in any manner consistent with federal law, these rules, Official Forms, and local rules of the district. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, Official Forms, or the local rules of the district unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

Amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 27, 1995, eff. Dec. 1, 1995.

Cross References

Local rules to govern appellate practice, see rule 8018.

Library References:

C.J.S. Bankruptcy § 6.

West's Key No. Digests, Bankruptcy Ⓒ2129.

Committee Note

This rule is an adaptation of Rule 83 F.R.Civ.P. and Rule 57(a) F.R.Crim.P. Under this rule bankruptcy courts may make local rules which govern practice before those courts. Circuit councils and district courts are authorized by Rule 8018 to make local rules governing appellate practice.

Committee Note to 1987 Amendments

Rule 9029 is amended to authorize the district court to promulgate local rules governing bankruptcy practice. This rule, as amended, permits the district court to authorize the bankruptcy judges to promulgate or recommend local rules for adoption by the district court.

Effective August 1, 1985, Rule 83 F.R.Civ.P., governing adoption of local rules, was amended to achieve greater participation by the bar, scholars, and the public in the rule making process; to authorize the judicial council to abrogate local rules; and to make certain that single-judge standing orders are not inconsistent with these rules or local rules. Rule 9029 has been amended to incorporate Rule 83. The term "court" in the last sentence of the rule includes the judges of the district court and the bankruptcy judges of the district. See Rule 9001(4).

Committee Note to 1991 Amendments

This rule is amended to make it clear that the Official Forms must be accepted in every bankruptcy court.

Committee Note to 1995 Amendments

Subdivision (a). This rule is amended to reflect the requirement that local rules be consistent not only with applicable national rules but also with Acts of Congress. The amendment also states that local rules should not repeat applicable national rules and acts of Congress.

The amendment also requires that the numbering of local rules conform with any uniform numbering system that may be prescribed by the Judicial Conference. Lack of uniform numbering might create unnecessary traps for counsel and litigants. A uniform numbering system would make it easier for an increasingly national bar and for litigants to locate a local rule that applies to a particular procedural issue.

Rule 9030**JURISDICTION AND VENUE UNAFFECTED**

These rules shall not be construed to extend or limit the jurisdiction of the courts or the venue of any matters therein.

Amended Mar. 30, 1987, eff. Aug. 1, 1987.

Cross References

Power of Supreme Court to prescribe bankruptcy rules, see § 2075 of Title 28, Judiciary and Judicial Procedure.

Library References:

C.J.S. Bankruptcy § 6; Federal Civil Procedure § 19.
West's Key No. Digests, Bankruptcy ⌘2129; Federal Civil Procedure ⌘40.

Committee Note

The rule is an adaptation of Rule 82 F.R.Civ.P.

Rule 9031**MASTERS NOT AUTHORIZED**

Rule 53 F.R.Civ.P. does not apply in cases under the Code.

Library References:

C.J.S. Bankruptcy § 5; Federal Civil Procedure §§ 896 et seq.
West's Key No. Digests, Bankruptcy ⌘2127.1; Federal Civil Procedure ⌘1890.1-1908.

Committee Note

This rule precludes the appointment of masters in cases and proceedings under the Code.

Rule 9032**EFFECT OF AMENDMENT OF FEDERAL
RULES OF CIVIL PROCEDURE**

The Federal Rules of Civil Procedure which are incorporated by reference and made applicable by these rules shall be the Federal Rules of Civil Procedure in effect on the effective date of these rules and as thereafter amended, unless otherwise provided by such amendment or by these rules.

Amended Apr. 30, 1991, eff. Aug. 1, 1991.

Library References:

C.J.S. Bankruptcy § 6.
West's Key No. Digests, Bankruptcy ⌘2129.

Committee Note to 1991 Amendments

This rule is amended to provide flexibility so that the Bankruptcy Rules may provide that subsequent amendments to a Federal Rule of Civil Procedure made applicable by these rules are not effective with regard to Bankruptcy Code cases or proceedings. For example, in view of the anticipated amendments to, and restructuring of, Rule 4 F.R.Civ.P., Rule 7004(g) will prevent such changes from affecting Bankruptcy Code cases until the Advisory Committee on Bankruptcy Rules has an opportunity to consider such amendments and to make appropriate recommendations for incorporating such amendments into the Bankruptcy Rules.

Rule 9033

**REVIEW OF PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW IN NON-CORE
PROCEEDINGS**

(a) Service. In non-core proceedings heard pursuant to 28 U.S.C. § 157(c)(1), the bankruptcy judge shall file proposed findings of fact and conclusions of law. The clerk shall serve forthwith copies on all parties by mail and note the date of mailing on the docket.

(b) Objections: Time for Filing. Within 10 days after being served with a copy of the proposed findings of fact and conclusions of law a party may serve and file with the clerk written objections which identify the specific proposed findings or conclusions objected to and state the grounds for such objection. A party may respond to another party's objections within 10 days after being served with a copy thereof. A party objecting to the bankruptcy judge's proposed findings or conclusions shall arrange promptly for the transcription of the record, or such portions of it as all parties may agree upon or the bankruptcy judge deems sufficient, unless the district judge otherwise directs.

(c) Extension of Time. The bankruptcy judge may for cause extend the time for filing objections by any party for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this rule. A request to extend the time for filing objections must be made before the time for filing objections has expired, except that a request made no more than 20 days after the expiration of the time for filing objections may be granted upon a showing of excusable neglect.

(d) Standard of Review. The district judge shall make a de novo review upon the record or, after additional evidence, of any portion of the bankruptcy judge's findings of fact or conclusions of law to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the proposed findings of fact or conclusions of law, receive further evidence, or recommit the matter to the bankruptcy judge with instructions.

Adopted Mar. 30, 1987, eff. Aug. 1, 1987.

Library References:

C.J.S. Bankruptcy §§ 9, 471.

West's Key No. Digests, Bankruptcy ☞2104, 2105.

Committee Notes

Section 157(c)(1) of title 28 requires a bankruptcy judge to submit proposed findings of fact and conclusions of law to the district court when the bankruptcy judge has heard a non-core proceeding. This rule, which is modeled on Rule 72 F.R.Civ.P., provides the procedure for objecting to, and for review by, the district court of specific findings and conclusions.

Subdivision (a) requires the clerk to serve a copy of the proposed findings and conclusions on the parties. The bankruptcy clerk, or the district court clerk if there is no bankruptcy clerk in the district, shall serve a copy of the proposed findings and conclusions on all parties.

Subdivision (b) is derived from Rule 72(b) F.R.Civ.P. which governs objections to a recommended disposition by a magistrate.

Subdivision (c) is similar to Rule 8002(c) of the Bankruptcy Rules and provides for granting of extensions of time to file objections to proposed findings and conclusions.

Subdivision (d) adopts the de novo review provisions of Rule 72(b) F.R.Civ.P.

Rule 9034**TRANSMITTAL OF PLEADINGS, MOTION PAPERS,
OBJECTIONS, AND OTHER PAPERS TO THE UNITED
STATES TRUSTEE**

Unless the United States trustee requests otherwise or the case is a chapter 9 municipality case, any entity that files a pleading, motion, objection, or similar paper relating to any of the following matters shall transmit a copy thereof to the United States trustee within the time required by these rules for service of the paper:

- (a) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business;
- (b) the approval of a compromise or settlement of a controversy;
- (c) the dismissal or conversion of a case to another chapter;
- (d) the employment of professional persons;
- (e) an application for compensation or reimbursement of expenses;
- (f) a motion for, or approval of an agreement relating to, the use of cash collateral or authority to obtain credit;
- (g) the appointment of a trustee or examiner in a chapter 11 reorganization case;
- (h) the approval of a disclosure statement;
- (i) the confirmation of a plan;
- (j) an objection to, or waiver or revocation of, the debtor's discharge;
- (k) any other matter in which the United States trustee requests copies of filed papers or the court orders copies transmitted to the United States trustee.

Adopted Apr. 30, 1991, eff. Aug. 1, 1991.

Library References:

C.J.S. Bankruptcy §§ 5, 194, 195.
West's Key No. Digests, Bankruptcy ⇨2127.1, 3001.

Committee Note to 1991 Amendments

Section 307 of the Code gives the United States trustee the right to appear and be heard on issues in cases and proceedings under the Code. This rule is intended to keep the United States trustee informed of certain developments and disputes in which the United States may wish to be heard. This rule, which derives from Rule X-1008, also enables the United States trustee to monitor the progress of the case in accordance with 28 U.S.C. § 586(a). The requirement to transmit copies of certain pleadings, motion papers and other documents is intended to be flexible in that the United

States trustee in a particular judicial district may request copies of papers in certain categories, and may request not to receive copies of documents in other categories, when the practice in that district makes that desirable. When the rules require that a paper be served on particular parties, the time period in which service is required is also applicable to transmittal to the United States trustee.

Although other rules require that certain notices be transmitted to the United States trustee, this rule goes further in that it requires the transmittal to the United States trustee of other papers filed in connection with these matters. This rule is not an exhaustive list of the matters of which the United States trustee may be entitled to receive notice.

Rule 9035

APPLICABILITY OF RULES IN JUDICIAL DISTRICTS IN ALABAMA AND NORTH CAROLINA

In any case under the Code that is filed in or transferred to a district in the State of Alabama or the State of North Carolina and in which a United States trustee is not authorized to act, these rules apply to the extent that they are not inconsistent with the provisions of any federal statute effective in the case. Adopted Apr. 30, 1991, eff. Aug. 1, 1991; amended Apr. 11, 1997, eff. Dec. 1, 1997.

Library References:

C.J.S. Bankruptcy § 6.
West's Key No. Digests, Bankruptcy Ⓒ2129.

Committee Note to 1991 Amendments

Section 302(d)(3) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 provides that amendments to the Code relating to United States trustees and quarterly fees required under 28 U.S.C. § 1930(a)(6) do not become effective in any judicial district in the States of Alabama and North Carolina until the district elects to be included in the United States trustee system, or October 1, 1992, whichever occurs first, unless Congress extends the deadline. If the United States trustee system becomes effective in these districts, the transition provisions in the 1986 Act will govern the application of the United States trustee amendments to cases that are pending at that time. See § 302(d)(3)(F). The statute, and not the bankruptcy court, determines whether a United States trustee is authorized to act in a particular case.

Section 302(d)(3)(I) of the 1986 Act authorizes the Judicial Conference of the United States to promulgate regulations governing the appointment of bankruptcy administrators to supervise the administration of estates and trustees in cases in the districts in Alabama and North Carolina until the provisions of the Act relating to the United States trustee take effect in these districts. Pursuant to this authority, in September 1987, the Judicial Conference promulgated regulations governing the selection and appointment of bankruptcy administrators and regulations governing the establishment, duties, and functions of bankruptcy administrators. Guidelines relating to the bankruptcy administrator program have been prescribed by the Director of the Administrative Office of the United States Courts.

Many of these rules were amended to implement the United States trustee system in accordance with the 1986 Act. Since the provisions of the 1986 Act relating to the United States trustee system are not effective in cases in Alabama and North Carolina in which a bankruptcy administrator is serving, rules referring to United States trustees are at least partially inconsistent with the provisions of the Bankruptcy Code and title 28 of the United States Code effective in such cases.

In determining the applicability of these rules in cases in Alabama and North Carolina in which a United States trustee is not authorized to act, the following guidelines should be followed:

(1) The following rules do not apply because they are inconsistent with the provisions of the Code or title 28 in these cases: 1002(b), 1007(1), 1009(c), 2002(k), 2007.1(b), 2015(a)(6), 2020, 3015(b), 5005(b), 7004(b)(10), 9003(b), and 9034.

(2) The following rules are partially inconsistent with the provisions of the Code effective in these cases and, therefore, are applicable with the following modifications:

(a) Rule 2001(a) and (c)—The court, rather than the United States trustee, appoints the interim trustee.

(b) Rule 2003—The duties of the United States trustee relating to the meeting of creditors or equity security holders are performed by the officer determined in accordance with regulations of the Judicial Conference, guidelines of the Director of the Administrative Office, local rules or court orders.

(c) Rule 2007—The court, rather than the United States trustee, appoints committees in chapter 9 and chapter 11 cases.

(d) Rule 2008—The bankruptcy administrator, rather than the United States trustee, informs the trustee of how to qualify.

(e) Rule 2009(c) and (d)—The court, rather than the United States trustee, appoints interim trustees in chapter 7 cases and trustees in chapter 11, 12 and 13 cases.

(f) Rule 2010—The court, rather than the United States trustee, determines the amount and sufficiency of the trustee's bond.

(g) Rule 5010—The court, rather than the United States trustee, appoints the trustee when a case is reopened.

(3) All other rules are applicable because they are consistent with the provisions of the Code and title 28 effective in these cases, except that any reference to the United States trustee is not applicable and should be disregarded.

Many of the amendments to the rules are designed to give the United States trustee, a member of the Executive Branch, notice of certain developments and copies of petitions, schedules, pleadings, and other papers. In contrast, the bankruptcy administrator is an officer in the Judicial Branch and matters relating to notice of developments and access to documents filed in the clerk's office are governed by regulations of the Judicial Conference of the United States, guidelines of the Administrative Office of the United States Courts, local rules, and court orders. Also, requirements for disclosure of connections with the bankruptcy administrator in applications for employment of professional persons, restrictions on appointments of relatives of bankruptcy administrators, effects of erroneously filing papers with the bank-

ruptcy administrator, and other matters not covered by these rules may be governed by regulations of the Judicial Conference, guidelines of the Director of the Administrative Office, local rules, and court orders.

This rule will cease to have effect if a United States trustee is authorized in every case in the districts in Alabama and North Carolina.

Committee Note to 1997 Amendments

Certain statutes that are not codified in title 11 or title 28 of the United States Code, such as § 105 of the Bankruptcy Reform Act of 1994, Pub.L. 103-394, 108 Stat. 4106, relate to bankruptcy administrators in the judicial districts of North Carolina and Alabama. This amendment makes it clear that the Bankruptcy Rules do not apply to the extent that they are inconsistent with these federal statutes.

Rule 9036

NOTICE BY ELECTRONIC TRANSMISSION

Whenever the clerk or some other person as directed by the court is required to send notice by mail and the entity entitled to receive the notice requests in writing that, instead of notice by mail, all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission, the court may direct the clerk or other person to send the information by such electronic transmission. Notice by electronic transmission is complete, and the sender shall have fully complied with the requirement to send notice, when the sender obtains electronic confirmation that the transmission has been received. Adopted Apr. 22, 1993, eff. Aug. 1, 1993.

Committee Note to 1993 Amendments

This rule is added to provide flexibility for banks, credit card companies, taxing authorities, and other entities that ordinarily receive notices by mail in a large volume of bankruptcy cases, to arrange to receive by electronic transmission all or part of the information required to be contained in such notices.

The use of electronic technology instead of mail to send information to creditors and interested parties will be more convenient and less costly for the sender and the receiver. For example, a bank that receives by mail, at different locations, notices of meetings of creditors pursuant to Rule 2002(a) in thousands of cases each year may prefer to receive only the vital information ordinarily contained in such notices by electronic transmission to one computer terminal.

The specific means of transmission must be compatible with technology available to the sender and the receiver. Therefore, electronic transmission of notices is permitted only upon request of the entity entitled to receive the notice, specifying the type of electronic transmission, and only if approved by the court.

Electronic transmission pursuant to this rule completes the notice requirements. The creditor or interested party is not thereafter entitled to receive the relevant notice by mail.

PART X
UNITED STATES TRUSTEES [ABROGATED]

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

Editorial Comments

This section of the pamphlet contains a preliminary draft of proposed amendments to Rules 1004, 2004, 2014, 2015, 4004, 9014 and 9027, new Rule 1004.1, and Official Form 1.

These amendments have *not* been approved by the Judicial Conference Standing Committee on Rules of Practice and Procedure, and have *not* been submitted to the Judicial Conference or the Supreme Court.

Public hearings will be held on the amendments to the Bankruptcy Rules in Washington, DC on January 26, 2001. All comments and suggestions with respect to the amendments must be in the hands of the Secretary no later than February 15, 2001.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

TO: Honorable Anthony J. Scirica, Chair
Standing Committee on Rules of Practice
and Procedure

FROM: Honorable Adrian G. Duplantier, Chair
Advisory Committee on Bankruptcy Rules

DATE: May 11, 2000

RE: Report of the Advisory Committee on Bankruptcy
Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met on March 9-10, 2000, in Key Largo, Florida. The Advisory Committee considered public comments regarding proposed amendments to the Bankruptcy Rules that were published in August 1999.

* * * * *

The Advisory Committee approved a preliminary draft of proposed amendments to Bankruptcy Rules 1004, 2004, 2014, 2015, 4004, 9014, and 9027, and new Bankruptcy Rule 1004.1. The Advisory Committee also approved a preliminary draft of proposed amendments to Official Form 1 (Voluntary Petition), and will present the Form and Rules proposals to the Standing Committee at its June 2000 meeting with a request that they be published for comment.

The Advisory Committee also discussed whether to support a proposal to require or encourage local courts to publish their local rules on the Internet accessible from a link from the website of the Administrative Office of the United States Courts. The discussion noted that local rules often are effectively unpublished notwithstanding efforts to improve access to those rules. The Advisory Committee then approved a resolution to 1) urge each bankruptcy court to establish and maintain a website; 2) encourage each court to post its local rules on the website; and 3) establish a local rules link from the Administrative Office website to each local court's website.

* * * * *

Preliminary Draft of Proposed Amendments to Bankruptcy Rules 1004, 2004, 2014, 2015(a)(5), 4004, 9014, and 9027(a)(3), new Proposed Bankruptcy Rule 1004.1, and Proposed Amendments to Official Form 1.

1. *Synopsis of Proposed Amendments:*

- (a) Rule 1004 is amended to clarify that the rule implements § 303(b)(3)(A) of the Bankruptcy Code and is not intended to estab-

PROPOSED AMENDMENTS

lish any substantive standard for the commencement of a voluntary case by a partnership.

- (b) Rule 1004.1 is added to set out the manner in which a case is commenced on behalf of an infant or an incompetent person. Proposed Rule 1004.1 is derived from Rule 17(c) F.R. Civ. P.
 - (c) Rule 2004 is amended to clarify that an examination ordered under that rule may be held outside of the district in which the case is pending. The court where the examination will be held issues the subpoena, and it is served in the manner provided in Rule 45 F.R. Civ. P., made applicable by Rule 9016. Moreover, the rule makes clear that an attorney authorized to practice either in the court in which the case is pending or in the court for the district in which the examination will be held may issue and sign the subpoena on behalf of the court for the district in which the examination will be held.
 - (d) Rule 2014 is rewritten to make it conform more closely to the applicable provisions of the Bankruptcy Code. The rule also includes stylistic changes and sets out service requirements for the application.
 - (e) Rule 2015(a)(5) is amended to conform to 28 U.S.C. § 1930(a)(6) which was amended in 1996.
 - (f) Rule 4004(c) is amended to provide that the filing of a motion under § 707 of the Bankruptcy Code to dismiss a case postpones the entry of the discharge. Currently, only motions brought under § 707(b) postpone entry of the discharge.
 - (g) Rule 9014 is amended to include Rule 7009 on pleading special matters, and Rule 7017 on real parties in interest, infants and incompetent persons, to the list of Rules applicable in contested matters. It is also amended to permit service of papers, other than the initial motion, under Rule 5(b) F.R. Civ. P. Subdivision (d) is added to clarify that in any matter presenting a disputed material issue of fact, an evidentiary hearing must be held at which the testimony of witnesses is taken under Rule 43(a) F. R. Civ. P. Subdivision (e) is amended to address problems of local variation in procedures for the appearance of witnesses by requiring that the court provide a mechanism to enable attorneys to know whether the presence of a witness is necessary at any particular hearing.
 - (h) Rule 9027(a)(3) is amended to clarify that the time limits for filing a notice of removal of a claim or cause of action apply to any claim or cause of action initiated after the commencement of a bankruptcy case, whether the bankruptcy case is still pending or has been suspended, dismissed, or closed.
 - (i) Official Form 1 is the form of a voluntary petition, and it is amended to require the debtor to disclose ownership or possession of property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety.
2. *Text of Preliminary Draft of Proposed Amendments Submitted for Approval to Publish:*

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 1004. ~~Partnership~~ Petition ~~Involuntary Petition Against a Partnership~~

~~(a) VOLUNTARY PETITION. A voluntary petition may be filed on behalf of a partnership by one or more general partners if all general partners consent to the petition.~~

~~(b) INVOLUNTARY PETITION; NOTICE AND SUMMONS. After filing of an involuntary petition under § 303(b)(3) of the Code, (1) the petitioning partners or other petitioners shall cause forthwith a copy of the petition to be sent promptly send to or served serve on each general partner who is not a petitioner a copy of the petition; and (2) the clerk shall promptly issue forthwith a summons for service on each general partner who is not a petitioner. Rule 1010 applies to the form and service of the summons.~~

COMMITTEE NOTE

Section 303(b)(3)(A) of the Code provides that fewer than all of the general partners in a partnership may commence an involuntary case against the partnership. There is no counterpart provision in the Code setting out the manner in which a partnership commences a voluntary case. The Supreme Court has held in the corporate context that applicable nonbankruptcy law determines whether authority exists for a particular debtor to commence a bankruptcy case. *See Price v. Gurney*, 324 U.S. 100 (1945). The lower courts have followed this rule in the partnership context as well. *See, e.g., Jolly v. Pittore*, 170 B.R. 793 (S.D.N.Y. 1994); *Union Planters National Bank v. Hunters Horn Associates*, 158 B.R. 729 (Bankr. M.D. Tenn. 1993); *In re Channel 64 Joint Venture*, 61 B.R. 255 (Bankr. S.D. Ohio 1986). Rule 1004(a) could be construed as requiring the consent of all of the general partners to the filing of a voluntary petition, even if fewer than all of the general partners would have the authority under applicable nonbankruptcy law to commence a bankruptcy case for the partnership. Since this is a matter of substantive law beyond the scope of these rules, Rule 1004(a) is deleted as is the designation of subdivision (b).

The rule is retitled to reflect that it applies only to involuntary petitions filed against partnerships.

Rule 1004.1 Petition for an Infant or Incompetent Person

If an infant or incompetent person has a representative, including a general guardian, committee, conservator, or similar fiduciary, the representative may file a voluntary petition on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may file a voluntary petition by next friend or guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person who is a debtor and is not otherwise represented or shall make any other order to protect the infant or incompetent debtor.

* New matter is underlined; matter to be omitted is lined through.

COMMITTEE NOTE

This rule is derived from Rule 17(c) F.R. Civ. P. It does not address the commencement of a case filed on behalf of a missing person. *See, e.g., In re King*, 234 B.R. 515 (Bankr. D.N.M. 1999).

Rule 2004. Examination

(a) EXAMINATION ON MOTION. On motion of any party in interest, the court may order the examination of any entity.

* * * * *

(c) COMPELLING ATTENDANCE AND PRODUCTION OF DOCUMENTS ~~Documentary Evidence~~. The attendance of an entity for examination and for the production of ~~documentary evidence~~ documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled in the manner as provided in Rule 9016 for the attendance of a witness ~~witnesses~~ at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice in that court or in the court in which the case is pending.

* * * * *

COMMITTEE NOTE

Subdivision (c) is amended to clarify that an examination ordered under Rule 2004(a) may be held outside the district in which the case is pending if the subpoena is issued by the court for the district in which the examination is to be held and is served in the manner provided in Rule 45 F.R. Civ. P., made applicable by Rule 9016.

The subdivision is amended further to clarify that, in addition to the procedures for the issuance of a subpoena set forth in Rule 45 F.R. Civ. P., an attorney may issue and sign a subpoena on behalf of the court for the district in which a Rule 2004 examination is to be held if the attorney is authorized to practice, even if admitted pro hac vice, either in the court in which the case is pending or in the court for the district in which the examination is to be held. This provision supplements the procedures for the issuance of a subpoena set forth in Rule 45(a)(3)(A) and (B) F.R. Civ. P. and is consistent with one of the purposes of the 1991 amendments to Rule 45, to ease the burdens of interdistrict law practice.

Rule 2014. Employment of a Professional Persons

~~(a) APPLICATION FOR AN ORDER OF EMPLOYMENT. An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals pursuant to § 327, § 1103, or § 1114 of the Code shall be made only on application of the trustee or committee. The application shall be filed and, unless the case is a chapter 9 municipality case, a copy of the application shall be transmitted by the applicant to the United States trustee. The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor.~~

~~creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.~~

(b) ~~SERVICES RENDERED BY MEMBER OR ASSOCIATE OF FIRM OF ATTORNEYS OR ACCOUNTANTS.~~ If, under the Code and this rule, a law partnership or corporation is employed as an attorney, or an accounting partnership or corporation is employed as an accountant, or if a named attorney or accountant is employed, any partner, member, or regular associate of the partnership, corporation or individual may act as attorney or accountant so employed, without further order of the court.

(a) APPLICATION FOR ORDER APPROVING EMPLOYMENT. An application for an order approving the employment of a professional person under § 327, § 1103, or § 1114 of the Code shall be in writing and may be made only by the trustee or committee. The application shall state:

- (1) specific facts showing why the employment is necessary;
- (2) the name of the person to be employed and the reasons for the selection;
- (3) the professional services to be rendered;
- (4) any proposed arrangement for compensation; and
- (5) that, to the best of the trustee's or committee's knowledge, the person to be employed is eligible under the Code for employment for the purposes set forth in the application.

(b) STATEMENT OF PROFESSIONAL. The application shall be accompanied by a verified statement of the person to be employed, made according to the best of that person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, which shall state:

- (1) that the person is eligible under the Code for employment for the purposes set forth in the application;
- (2) any interest that the person holds or represents that is adverse to the estate;
- (3) any interest, connection, or relationship that the person has relevant to determining whether the person is disinterested under § 101;
- (4) any relationship the person has with the United States trustee, or with any employee of the United States trustee, for the region in which the case is pending;
- (5) the information required to be disclosed under § 329(a) if the professional is an attorney; and
- (6) whether the person shared or has agreed to share any compensation with any person, other than a partner, employee, or regular associate of the person to be employed, and if so, the details.

(c) SERVICE AND TRANSMITTAL OF APPLICATION.

(1) The applicant shall serve a copy of the application on:

(A) the trustee;

(B) the debtor and the debtor's attorney;

(C) any committee elected under § 705 or appointed under § 1102, or, if the case is a chapter 9 case or a chapter 11 case and no committee of unsecured creditors has been appointed, on the creditors included on the list filed under Rule 1007(d); and

(D) any other entity as the court may direct.

(2) Unless the case is a chapter 9 case, the applicant shall transmit a copy of the application to the United States trustee.

(d) SERVICES RENDERED BY MEMBER OR ASSOCIATE OF FIRM OF EMPLOYED PROFESSIONAL. If the court approves the employment of an individual, partnership, or corporation, any partner, member, or regular associate of the individual, partnership, or corporation may act as the person so employed, without further order of the court. If a partnership is employed, a further order approving employment is not required if the partnership has dissolved solely because of the addition or withdrawal of a partner.

(e) SUPPLEMENTAL STATEMENT OF PROFESSIONAL. Within 15 days after becoming aware of any undisclosed matter that is required to be disclosed under Rule 2014(b), a person employed under this rule shall file a supplemental statement, serve a copy on each entity listed in Rule 2014(c), and, unless the case is a chapter 9 case, transmit a copy to the United States trustee.

COMMITTEE NOTE

The rule has been rewritten to make stylistic changes and to make it conform more closely to the applicable provisions of the Code. The rule directs professionals seeking court approval of their employment to disclose all information relevant to determining whether the person is "disinterested" as defined in § 101 of the Code. The rule requires the professional to undertake a reasonable inquiry under the circumstances to identify any facts relevant to that determination.

The rule also sets out the service requirements for the application for the approval of employment. There is no provision requiring a hearing on the application. In most cases, an order approving the employment will be entered without a hearing. The court may set a hearing sua sponte or on request or may vacate an order issued under the rule upon motion of an interested party.

The rule does not address the standards that courts should apply in ruling on an application for employment of a professional.

Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case

(a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee or debtor in possession shall

* * * * *

(5) in a chapter 11 reorganization case, on or before the last day of the month after each calendar quarter during which there is a duty to pay fees under 28

~~U.S.C. § 1930(a)(6), until a plan is confirmed or the case is converted or dismissed, file and transmit to the United States trustee a statement of the any disbursements made during such calendar that quarter and a statement of the amount of the any fees payable under required pursuant to 28 U.S.C. § 1930(a)(6) that has been paid for such calendar that quarter.~~

* * * * *

COMMITTEE NOTE

Subdivision (a)(5) is amended to provide that the duty to file quarterly disbursement reports continues only so long as there is an obligation to make quarterly payments to the United States trustee under 28 U.S.C. § 1930(a)(6).

Other amendments are stylistic.

Rule 3020. Grant or Denial of Discharge¹

* * * * *

(c) GRANT OF DISCHARGE.

(1) In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge unless:

(A) the debtor is not an individual,

(B) a complaint objecting to the discharge has been filed,

(C) the debtor has filed a waiver under § 727(a)(10),

(D) a motion to dismiss the case under ~~Rule 1017(e)~~ § 707 is pending,

(E) a motion to extend the time for filing a complaint objecting to discharge is pending, ~~or~~

(F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e) is pending, or

(G) the debtor has not paid in full the filing fee prescribed by 28 U.S.C. § 1930(a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code.

* * * * *

COMMITTEE NOTE

Subdivision (c)(1)(D) is amended to provide that the filing of a motion to dismiss under § 707 of the Bankruptcy Code postpones the entry of the discharge. Under the present version of the rule, only motions to dismiss brought under § 707(b) caused the postponement of the discharge. This

1. This draft reflects the amendments to Bankruptcy Rule 4004(c) that the Supreme Court promulgated on April 17, 2000. Those amendments will become effective on December 1, 2000, absent Congressional action to the contrary.

amendment would change the result in cases such as *In re Tanenbaum*, 210 B.R. 182 (Bankr. D. Colo. 1997).

Other amendments to the rule are stylistic.

Rule 9014. Contested Matters

(a) MOTION. In a contested matter ~~in a case under the Code~~ not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court ~~orders an answer to a motion~~ directs otherwise.

(b) SERVICE. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004, ~~and, unless the court otherwise directs, Any paper served after the motion shall be served in the manner provided by Rule 5(b) F.R. Civ.P.~~

(c) APPLICATION OF PART VII RULES. Unless the court directs otherwise, the following rules shall apply: 7009, 7017, 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056, 7062, 7064, 7069, and 7071. An entity that desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027 for the taking of a deposition before an adversary proceeding. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. The court shall give the parties notice of any order issued under this paragraph to afford them a reasonable opportunity to comply with the procedures prescribed by the order. ~~An entity that desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027 for the taking of a deposition before an adversary proceeding. The clerk shall give notice to the parties of the entry of any order directing that additional rules of Part VII are applicable or that certain of the rules of Part VII are not applicable. The notice shall be given within such time as is necessary to afford the parties a reasonable opportunity to comply with the procedures made applicable by the order.~~

(d) TESTIMONY OF WITNESSES. Testimony of witnesses with respect to disputed factual issues shall be taken under Rule 43(a) F.R. Civ.P. in the same manner as testimony is taken at a trial in an adversary proceeding.

(e) ATTENDANCE OF WITNESSES. The court shall provide procedures that enable parties to ascertain at a reasonable time before any scheduled hearing whether the hearing will be an evidentiary hearing at which witnesses may testify.

COMMITTEE NOTE

The list of Part VII rules that are applicable in a contested matter is extended to include Rule 7009 on pleading special matters, and Rule 7017 on real parties in interest, infants and incompetent persons, and capacity. The discovery rules made applicable in adversary proceedings apply in contested matters unless the court directs otherwise.

Subdivision (b) is amended to permit parties to serve papers, other than the original motion, in the manner provided in Rule 5(b) F.R. Civ. P. When the court requires a response to the motion, this amendment will permit service of the response in the same manner as an answer is served in an adversary proceeding.

Subdivision (d) is added to clarify that if the motion cannot be decided without resolving a disputed material issue of fact, an evidentiary hearing must be held at which testimony of witnesses is taken in the same manner as testimony is taken at a trial in an adversary proceeding or at a trial in a district court civil case. Rule 43(a), rather than Rule 43(e), Fed. R. Civ. P., would govern the evidentiary hearing on the factual dispute. Under Rule 9017, the Federal Rules of Evidence also apply in a contested matter.

Subdivision (e). Local procedures for hearings and other court appearances in a contested matter vary from district to district. In some bankruptcy courts, an evidentiary hearing at which witnesses may testify usually is held at the first court appearance in the contested matter. In other courts, it is customary for the court to delay the evidentiary hearing on disputed factual issues until some time after the initial hearing date. In order to avoid unnecessary expense and inconvenience, it is important for attorneys to know whether they should bring witnesses to a court appearance. The purpose of the final sentence of this rule is to require that the court provide a mechanism that will enable attorneys to know at a reasonable time before a scheduled hearing whether it will be necessary for witnesses to appear in court on that particular date.

Other amendments to this rule are stylistic.

Rule 9027. Removal

(a) NOTICE OF REMOVAL.

* * * * *

(3) *Time for Filing; Civil Action Initiated after Commencement of the Case under the Code.* ~~If a case under the Code is pending when a claim or cause of action is asserted in another court,~~ If a claim or cause of action is asserted in another court after the commencement of a case under the Code, a notice of removal may be filed with the clerk only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed, or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.

* * * * *

COMMITTEE NOTE

Subdivision (a)(3) is amended to clarify that if a claim or cause of action is initiated after the commencement of a bankruptcy case, the time limits for filing a notice of removal of the claim or cause of action apply whether the case is still pending or has been suspended, dismissed, or closed.

OFFICIAL BANKRUPTCY FORMS

Editorial Comments

The Forms section that follows includes the Official Bankruptcy Forms and Additional Procedural Forms, as issued by the Administrative Office of the United States Courts, together with accompanying commentary and instructions promulgated by the Judicial Conference of the United States.

1999 AMENDMENTS TO OFFICIAL BANKRUPTCY FORMS

Several of the Director's procedural forms* have been renumbered. These include the following forms:

<u>New form number:</u>	<u>Former form number:</u>
B18F	B243A
B18FH	B243B
B18W	B242A
B18WH	B242B
B230A	B231A
B230B	B231B
B231A	B230A
B231B	B230B

* The Procedural Forms are not published in this pamphlet. This amendment note is supplied for informational purposes only.

1998 AMENDMENTS TO OFFICIAL BANKRUPTCY FORMS

On April 1, 1998, automatic adjustments to the dollar amounts as stated in various provisions of the Bankruptcy Code became effective, which apply to cases filed on or after that date. Two of the Official Bankruptcy Forms contain references to several of the affected dollar amounts. Accordingly, Official Form 6E (Schedule of Creditors Holding Claims Entitled to Priority) and Official Form 10 (Proof of Claim) also were amended applicable to cases filed on or after that date.

1997 AMENDMENTS TO OFFICIAL BANKRUPTCY FORMS

The Judicial Conference of the United States approved two new Official Bankruptcy Forms and amendments to nine current Official Bankruptcy Forms at its September 1997 meeting. The new forms are Official Forms 20A and 20B. The amended forms are Official Forms 1, 3, 6F, 9A-I, 10, 14, 17, and 18. Although the new versions of the forms are effective immediately, the Judicial Conference provided for a phase-in period during which both the new and the old versions are acceptable. Use of the new versions became mandatory starting March 1, 1998.

OFFICIAL FORMS

1995 AMENDMENTS TO OFFICIAL AND PROCEDURAL BANKRUPTCY FORMS

The Bankruptcy Reform Act of 1994, which took effect on October 22, 1994, contained a number of provisions that required amendments and additions to the Official Bankruptcy Forms and to the Procedural Bankruptcy Forms promulgated by the Director of the Administrative Office of the United States Courts. The amendments to the Official Forms took effect upon their approval by the Judicial Conference on March 31, 1995. The forms issued by the Director of the Administrative Office took effect upon their issuance on January 31, 1995.

1993 AMENDMENTS TO OFFICIAL AND PROCEDURAL BANKRUPTCY FORMS

The Judicial Conference of the United States approved technical amendments to five of the Official Bankruptcy Forms, and added two alternative forms at its March 1993 meeting. The amended forms are Form 1 (Voluntary Petition), Form 4 (List of Creditors Holding 20 Largest Unsecured Claims), Form 6E, Schedule E (Creditors Holding Unsecured Priority Claims), Form 7 (Statement of Financial Affairs) and Form 10 (Proof of Claim). The new alternative forms include Forms 9E (Alt.) and 9F (Alt.).

1992 AMENDMENTS TO OFFICIAL AND PROCEDURAL BANKRUPTCY FORMS

The Judicial Conference of the United States approved amendments to five Official Bankruptcy Forms at its September 1992 meeting. The forms affected include Form 5 (Involuntary Petition) and four forms in the series that comprises Form 9 (Notice of Commencement of Case Under the Bankruptcy Code, Meeting of Creditors, and Fixing of Dates). The amendments are all technical in nature.

In addition, new Procedural Form B 243B was added, former Form B 241 was amended and renumbered as B 243A, and Forms B 242A and B 242B were amended. These additions and changes were necessary to harmonize the forms of Orders with recent statutory changes that have added to the categories of debts that are non-dischargeable in cases under Chapters 12 and 13.

1991 AMENDMENTS TO OFFICIAL AND PROCEDURAL FORMS

Effective August 1, 1991, the Judicial Conference approved a complete revision of the Official Bankruptcy Forms. This revision was necessitated by the extensive contemporaneous changes to the Federal Rules of Bankruptcy Procedure, and by the need to simplify and clarify the language in the forms.

Rule 9009 of the Federal Rules of Bankruptcy Procedure provides that the Official Forms "shall be observed and used with alterations as may be appropriate." The rule thus mandates the use of the Official Forms where applicable, and a 1991 amendment to Rule 9029 clarified that the local rules may not prohibit or limit their use.

Former Official Forms 5, 13, 14, 26, 32 and 33, although abrogated as Official Forms, have been made available as Procedural Forms B 206, B 250E, B 253, B 207, B 270 and B 271, respectively.

OFFICIAL FORMS

Procedural Forms B 254, B 255 and B 256 were added to bring the subpoena forms into conformity to the recently-amended Fed.R.Civ.P. 45 (Fed.R.Bankr.P. 9016). Former Forms B 251A—B 252B were consequently dropped.

Former Official Forms 15, 22, 23, 24 and 25, also abrogated as Official Forms, pertain to functions now performed by the United States Trustee. Forms necessary for carrying out those functions will be issued by the Department of Justice.

OFFICIAL BANKRUPTCY FORMS

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4. List of Creditors Holding 20 Largest Unsecured Claims
5. Involuntary Petition
6. Schedules
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- 9A. Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines—
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- 9B. Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines—
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- 9F.(Alt.) Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines—
Corporation/Partnership Case
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15. Order Confirming Plan
- 16A. Caption (Full)
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- 16C. Caption of Complaint in Adversary Proceeding Filed by a Debtor
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- 17. Notice of Appeal Under 28 U.S.C. § 158(a) or (b) From a Judgment, Order, or Decree of a Bankruptcy Court
- 18. Discharge of Debtor in a Chapter 7 case
- 19. Certification and Signature of Non-Attorney Bankruptcy Petition Preparer
- 20A. Notice of Motion or Objection
- 20B. Notice of Objection to Claim

PROCEDURAL FORMS

***[The Procedural Forms are not printed in this publication.
The following list of Procedural Forms
is provided for informational purposes only.]***

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- B 13S. Order Conditionally Approving Disclosure Statement, Fixing Time for Filing Acceptances or Rejections of Plan, and Fixing the Time for Filing Objections to the Disclosure Statement and to the Confirmation of the Plan, Combined With Notice Thereof and of the Hearing on Final Approval of the Disclosure Statement and the Hearing on Confirmation of the Plan
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 - B 281. Appearance of Child Support Creditor or Representative
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OFFICIAL FORMS

INTRODUCTION AND GENERAL INSTRUCTIONS

Rule 9009 of the Federal Rules of Bankruptcy Procedure states that the Official Forms prescribed by the Judicial Conference of the United States “shall be observed and used.” The Official Forms, accordingly, are obligatory in character.

Rule 9009 expressly permits the user of the Official Forms to make such “alterations as may be appropriate,” and the use of the Official Forms has been held to be subject to a “rule of substantial compliance.” Some rules, for example Fed.R.Bankr.P. 3001(a), specifically state that the filed document need only “conform substantially” to the Official Form. A document for which an Official Form is prescribed generally will meet the standard of substantial compliance if the document contains the complete substance, that is, all of the information required by the Official Form.

Rule 9009 also expressly permits the contents of Official Forms to be rearranged, and the format of the Official Forms traditionally has been quite flexible. The forms of the voluntary petition, the schedules, and the statement of financial affairs are printed and sold by private publishers. Design features such as type face, type size, layout, and side and top margins were not prescribed by the Judicial Conference, but rather left to the professional judgment of each publisher.

A great deal of variation, accordingly, has developed. Some publishers also add forms that are not official but which have been drafted by the publisher. A form for a chapter 13 plan, for example, frequently is included with commercially printed packages of forms for filing cases under chapter 13, although there is no Official Form for this purpose. The variety of formats has accelerated since the introduction of computer software for generating the petitions, schedules, and statements of affairs. It is the policy of the Judicial Conference that such diversity is desirable and should be encouraged.

The sheer volume of bankruptcy cases, however, has compelled the Judicial Conference, for the first time, to prescribe the format of certain Official Forms. In particular, the format of Form 1, the Voluntary Petition, now is prescribed. This format is designed to assist the clerk of the bankruptcy court to enter the case in the court’s computer database and ensures that all required information is available to both the clerk and the United States trustee at the inception of the case. The rule of substantial compliance continues to apply, however. Accordingly, publishers may vary the size and style of the type and may alter the size and shape of the boxes on the form, within the bounds of that rule.

The Official Forms of the petitions, schedules, and statement of financial affairs, (Forms 1, 5, 6, and 7), are to be printed on one side of the paper only. Each page is to be pre-punched with two holes at the top, and sufficient top margin allowed so that neither caption nor text is destroyed or obscured. Compliance with these standards will facilitate both the securing of the papers in the case file and review of the file by the public.

Although Rule 9009 permits alteration, for most of the Official Forms, alteration will be appropriate only in rare circumstances. The special forms for

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chapter 11 cases, on the other hand, seldom will be used without alterations. Forms 12 through 15, while legally sufficient in any chapter 11 case, are intended by the Judicial Conference, and most often will be used, as a framework for drafting a document specially tailored to the particular case. These alterations generally will take the form of additions to the prescribed elements.

Rule 9009 provides for a balance of prescribed substance, to which full adherence is expected in all but the most unusual cases, and flexible formatting, under which requirements are kept to the minimum necessary for proper operation of the courts and the bankruptcy system. While Rule 9009 recognizes the overall need for flexibility, Rule 9029 makes it clear that the Official Forms must be accepted in every bankruptcy court.

Under Rule 9029, courts may not reject documents presented for filing in novel or unfamiliar formats if those documents contain the substance prescribed by the Official Form and meet the requirements for one-sided printing, pre-punched holes, and adequate top margins. Nor are courts authorized to impose local forms which vary in substance from the Official Forms or reject papers presented for filing on Official Forms on the basis that the proffered documents differ from a locally preferred version.

Special Instructions for Computer-Generated Forms

In Form 1, the Voluntary Petition, if a box contains multiple choices, a computer-generated petition that shows only the choice made is acceptable for filing. All sections of the petition must be shown and completed, however, unless instructions on the Official Form of the petition state that the box is applicable only to cases filed under a chapter other than the one selected by the debtor. If the debtor has no information to provide for a particular box, for example if the debtor has no prior bankruptcies to report, a computer-generated petition should so indicate by stating "None."

Form 6, the Schedules, on which the debtor reports all of the debtor's assets and liabilities, has been prescribed in a columnar format. Columns help to organize the information which the debtor is required to report and should be used when the printed schedules are completed on a typewriter. In a computerized law office, however, the organizational structure of the schedules can be built into the computer program, and a rigid columnar format may be a hindrance rather than a help. Schedules generated by computer which provide all of the information requested by the prescribed form are fully acceptable, regardless of the format of the printed page. The information must be appropriately labeled, however. In Schedule B, for example, all of the categories of personal property must be printed on the filed document together with the debtor's response to each. The space occupied by each category may be expanded, however, so that attachments are not needed. Instructions provided on the printed forms can simply be built into the computer program; they need not be reprinted on the filed document.

Form 7, the Statement of Financial Affairs, contains a series of questions which direct the debtor to answer by furnishing information. If the answer to a question is "None," or the question is not applicable, an affirmative statement to that effect is required. To assure that the trustee and the creditors can review the debtor's statement properly, the complete text of each question must be printed on the filed document.

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Form 9, the Notice of Commencement of Case under the Bankruptcy Code, Meeting of Creditors, and Fixing of Dates, will be prepared by the clerk of the bankruptcy court in most cases. The form is designed for use with automated printing and mailing equipment. Two free lines, which do not appear on the printed blank form, have been programmed into the form. Courts may use this space to add local information, such as directions for obtaining copies of the debtor's schedules.

General Instructions About Filing a Bankruptcy Case

The law governing bankruptcy cases and the rights of debtors and creditors in bankruptcy cases is title 11 of the United States Code, 11 U.S.C. § 101, et seq., usually referred to as the "Bankruptcy Code." The current law was enacted in 1978 and has been amended several times since.

Important provisions governing the jurisdiction and operation of the bankruptcy courts and the administration of a bankruptcy debtor's property (the "bankruptcy estate") are located in title 28 of the United States Code. (28 U.S.C. § ____.) Federal criminal laws relating to the conduct of parties and officials acting in bankruptcy cases are located in title 18, United States Code. (18 U.S.C. § ____.)

In addition, the procedural aspects of a bankruptcy case, including many important time limits, are governed by the Federal Rules of Bankruptcy Procedure (referred to as the "Bankruptcy Rules" or "Fed. R. Bankr. P."). Most courts have local rules that must be observed by any party involved in a bankruptcy case in that court (usually referred to as "L.R. ____").

A debtor who has decided to file a bankruptcy case needs to assemble and complete a number of forms. Most of these forms are Official Forms (from Part I of this Manual), but some may be Procedural Forms (from Part II).

The requirements for filing various forms derive from the Bankruptcy Code, primarily sections 301, 302, and 521(1) (11 U.S.C. §§ 301, 302, 521(1)), and the Bankruptcy Rules, most importantly Rules 1002, 1005, 1007, 1008, and 3002. Bankruptcy Rule 9009 mandates the use of the Official Forms and authorizes the Judicial Conference of the United States to prescribe them. Rule 9009 also authorizes the Director of the Administrative Office to issue additional (procedural) forms for use in bankruptcy cases.

Filing a bankruptcy case is a complex undertaking. Anyone contemplating such a step should consult an attorney. If the extensive documents required in a bankruptcy case are not completed properly, or if further steps in the bankruptcy process are not taken on time, a debtor can lose property or other important rights unnecessarily.

General information on chapters 7, 9, 11, 12, and 13 of the Bankruptcy Code and definitions of bankruptcy terminology are available in the form of a Public Information Series, comprised of a series of fact sheets on these topics. Anyone may obtain the Public Information Series from the Administrative Office of the United States Courts, Bankruptcy Judges Division, One Columbus Circle, N.E., Washington, D.C. 20544. The fact sheets have been combined in the publication "Bankruptcy Basics," which is available at the federal judiciary's Internet web-site, "www.uscourts.gov."

An individual, of course, has the right to file a bankruptcy case without employing an attorney. Before doing so, the debtor should read a "self-help" book

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on filing bankruptcy or other reference materials, which are available in many libraries and bookstores. Many public libraries have reference sections containing copies of the Bankruptcy Code, Bankruptcy Rules, state laws, and additional books that can help explain them. A debtor should make sure to read only a CURRENT edition of the Bankruptcy Code and the Bankruptcy Rules, as both the Bankruptcy Code and the Bankruptcy Rules are amended frequently. The instructions in this Manual are necessarily brief and general. They should not be used as a substitute for reference to the applicable laws and rules but only as a supplement to them.

THE DEBTOR SHOULD READ ALL INSTRUCTIONS THOROUGHLY BEFORE BEGINNING TO FILL OUT ANY FORMS. EXTRA COPIES OF EACH FORM SHOULD BE MADE TO USE AS WORKSHEETS. A WORKSHEET SHOULD BE COMPLETED FOR EACH FORM. AFTER THE DEBTOR HAS COMPLETED AND REVIEWED EACH WORKSHEET AND IS SATISFIED THAT THE FORMS HAVE BEEN COMPLETED CORRECTLY, THE DEBTOR SHOULD TRANSFER THE INFORMATION FROM EACH WORKSHEET TO A CLEAN BLANK FORM. THE COMPLETED FORMS SHOULD BE SET ASIDE FOR SIGNING AND FILING.

The best procedure is to complete all required forms prior to filing. Bankruptcy Rule 1007 permits a debtor to file schedules and statements within 15 days after filing the petition and a list of all creditors with their addresses. This 15-day period can be extended by the court but only for cause after notice to the U.S. trustee and others specified in the Rule. A debtor should take advantage of these extensions only in an emergency.

In any voluntary case under any chapter of the Code a debtor must file the following forms:

Official Form 1, Voluntary Petition

Official Form 6, Schedules

Official Form 7, Statement of Financial Affairs.

In addition, a debtor who is an individual filing a chapter 7 liquidation case and who has one or more secured consumer debts may need to file

Official Form 8, Individual Debtor's Statement of Intention.

If an individual debtor is unable to pay the required filing fee at the time of filing the case, the debtor may need to file

Official Form 3, Application and Order to Pay Filing Fee in Installments.

In a chapter 11 case, the debtor also must file

Official Form 4, List of Creditors Holding 20 Largest Unsecured Claims.

If a debtor under any chapter is represented by an attorney, the attorney must complete and file

Procedural Form B 203, Disclosure of Compensation of Attorney for Debtor.

If a debtor uses a bankruptcy petition preparer, the preparer should complete and file

Procedural Form B 280, Disclosure of Compensation of Bankruptcy Petition Preparer.

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In addition, every court requires a mailing list for notifying creditors about the case that must be prepared according to a locally-prescribed format. In certain courts, by local rule, this list also must contain the names and addresses of specified entities, such as the district office of the Internal Revenue Service (IRS), regardless of whether the entity is a creditor in the case.

In some cases, a debtor also may need to file certain documents for which no form is nationally prescribed. For example, there is no national form for a chapter 13 plan. Some courts require a plan to be filed on a form prescribed by that court. Others will accept plans in a variety of formats. Some business supply stores stock bankruptcy filing kits, and these may include a form for a chapter 13 plan that has been developed by the forms publisher. Complex issues may arise in the Grafting of a chapter 13 plan. A debtor planning to file a chapter 13 case without a lawyer should consult the standing chapter 13 trustee for the district in which the debtor intends to proceed prior to filing a case. Anyone can obtain the name, office address, and telephone number of the standing chapter 13 trustee from the bankruptcy clerk's office.

Corporations and partnerships also have additional filing requirements. A corporation is required to file a list of equity security holders. Fed. R. Bankr. P. 1007(a)(3). As there is no nationally-prescribed form, the debtor or debtor's attorney must determine from the Rules what information must be supplied and create a suitable form for filing.

The Bankruptcy Code requires all debtors to file a statement of current income and current expenditures. 11 U.S.C. § 521(1). Although the Schedules contain a form on which individuals must report this information, no form is prescribed for a corporation or partnership. Accordingly, a corporation or partnership must devise a statement that provides the required information. In addition, many courts have local rules that state that a corporation must file a copy of the corporate resolution authorizing the filing of the bankruptcy case. There is no prescribed form for such a resolution.

THE DEBTOR SHOULD FILL IN ALL THE BLANK SPACES AND LINES ON EACH FORM. Some forms (Schedules E, F, G, and H, and the Statement of Financial Affairs) contain boxes for a debtor to use to state that the debtor has nothing to report or a question does not apply. On all other forms, a debtor should either insert "N/A" or "None" in response to any question or request for information that is not applicable or should cross out a printed statement that does not apply and initial the cross-out.

IT IS VERY IMPORTANT THAT THE DEBTOR SIGN ALL DOCUMENTS IN ALL THE REQUIRED PLACES. If a married couple files a joint case, both spouses must sign in all required places. If the debtor is represented by an attorney, the attorney must sign most documents. See Fed. R. Bankr. P. 9011. Any bankruptcy petition preparer also must sign in the spaces provided.

The Bankruptcy Code also authorizes a creditor or group of creditors to file an involuntary case against a debtor. 11 U.S.C. § 303. As the requirements for such a filing are complex and the penalties for improper filing harsh, anyone contemplating such action should consult an experienced attorney.

Form 1

VOLUNTARY PETITION

(Official Form 1) (9/97)

FORM B1 United States Bankruptcy Court District of _____		Voluntary Petition
Name of Debtor (if individual, enter Last, First, Middle):		Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):		All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
Soc. Sec./Tax I.D. No. (if more than one, state all):		Soc. Sec./Tax I.D. No. (if more than one, state all):
Street Address of Debtor (No. & Street, City, State & Zip Code):		Street Address of Joint Debtor (No. & Street, City, State & Zip Code):
County of Residence or of the Principal Place of Business:		County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):		Mailing Address of Joint Debtor (if different from street address):
Location of Principal Assets of Business Debtor (if different from street address above):		
Information Regarding the Debtor (Check the Applicable Boxes)		
Venue (Check any applicable box) <input type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District		
Type of Debtor (Check all boxes that apply) <input type="checkbox"/> Individual(s) <input type="checkbox"/> Railroad <input type="checkbox"/> Corporation <input type="checkbox"/> Stockbroker <input type="checkbox"/> Partnership <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Other _____		Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box) <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Sec. 304 - Case ancillary to foreign proceeding
Nature of Debts (Check one box) <input type="checkbox"/> Consumer/Non-Business <input type="checkbox"/> Business		Filing Fee (Check one box) <input type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments Rule 1006(b). See Official Form No. 3.
Chapter 11 Small Business (Check all boxes that apply) <input type="checkbox"/> Debtor is a small business as defined in 11 U.S.C. § 101 <input type="checkbox"/> Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(c) (Optional)		
Statistical/Administrative Information (Estimates only) <input type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.		THIS SPACE IS FOR COURT USE ONLY
Estimated Number of Creditors 1-14 15-20 21-30 31-100 101-1000 1001 or more <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
Estimated Assets \$0 to \$50,000 \$50,001 to \$100,000 \$100,001 to \$500,000 \$500,001 to \$1 million \$1,000,001 to \$10 million \$10,000,001 to \$50 million \$50,000,001 to \$100 million More than \$100 million <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
Estimated Debts \$0 to \$50,000 \$50,001 to \$100,000 \$100,001 to \$500,000 \$500,001 to \$1 million \$1,000,001 to \$10 million \$10,000,001 to \$50 million \$50,000,001 to \$100 million More than \$100 million <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		

(Official Form 1) (9/97)

Voluntary Petition (This page must be completed and filed in every case)		Name of Debtor(s) FORM B1, Page 2	
Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)			
Location Where Filed:		Case Number:	Date Filed
Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)			
Name of Debtor:		Case Number	Date Filed
District		Relationship	Judge

Signatures

<p style="text-align: center; font-weight: bold;">Signature(s) of Debtor(s) (Individual/Joint)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct.</p> <p>If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7, I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.</p> <p>I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p><input checked="" type="checkbox"/> _____ Signature of Debtor</p> <p><input checked="" type="checkbox"/> _____ Signature of Joint Debtor</p> <p>_____ Telephone Number (If not represented by attorney)</p> <p>_____ Date</p>	<p style="text-align: center; font-weight: bold;">Signature of Debtor (Corporation/Partnership)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.</p> <p>The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p><input checked="" type="checkbox"/> _____ Signature of Authorized Individual</p> <p>_____ Printed Name of Authorized Individual</p> <p>_____ Title of Authorized Individual</p> <p>_____ Date</p>
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<p style="text-align: center; font-weight: bold;">Signature of Attorney</p> <p><input checked="" type="checkbox"/> _____ Signature of Attorney for Debtor(s)</p> <p>_____ Printed Name of Attorney for Debtor(s)</p> <p>_____ Firm Name</p> <p>_____ Address</p> <p>_____ Telephone Number</p> <p>_____ Date</p>	<p style="text-align: center; font-weight: bold;">Signature of Non-Attorney Petition Preparer</p> <p>I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.</p> <p>_____ Printed Name of Bankruptcy Petition Preparer</p> <p>_____ Social Security Number</p> <p>_____ Address</p> <p>_____ Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document</p>
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<p style="text-align: center; font-weight: bold;">Exhibit A</p> <p>(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)</p> <p><input type="checkbox"/> Exhibit A is attached and made a part of this petition.</p>	<p>If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.</p>
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<p style="text-align: center; font-weight: bold;">Exhibit B</p> <p>(To be completed if debtor is an individual whose debts are primarily consumer debts)</p> <p>I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.</p> <p><input checked="" type="checkbox"/> _____ Signature of Attorney for Debtor(s) Date: _____</p>	<p><input checked="" type="checkbox"/> _____ Signature of Bankruptcy Petition Preparer</p> <p>_____ Date</p> <p>A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. §110; 18 U.S.C. §156.</p>
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Form B1, Exh.A (9/97)

Exhibit "A"

[If debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11 of the Bankruptcy Code, this Exhibit "A" shall be completed and attached to the petition.]

[Caption as in Form 16B]

Exhibit "A" to Voluntary Petition

1. If any of the debtor's securities are registered under Section 12 of the Securities Exchange Act of 1934, the SEC file number is _____.
2. The following financial data is the latest available information and refers to the debtor's condition on _____.

a.	Total assets	\$	
b.	Total debts (including debts listed in 2.c., below)	\$	

Approximate
number of
holders

c. Debt securities held by more than 500 holders.			
secured / /	unsecured / /	subordinated / /	\$ _____
secured / /	unsecured / /	subordinated / /	\$ _____
secured / /	unsecured / /	subordinated / /	\$ _____
secured / /	unsecured / /	subordinated / /	\$ _____
secured / /	unsecured / /	subordinated / /	\$ _____

d.	Number of shares of preferred stock	
e.	Number of shares common stock	

Comments, if any: _____

3. Brief description of debtor's business: _____

4. List the names of any person who directly or indirectly owns, controls, or holds, with power to vote, 5% or more of the voting securities of debtor: _____

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 1

VOLUNTARY PETITION

I. INTRODUCTION

This form, known as a “voluntary petition,” must be used by a debtor to begin a bankruptcy case. Filing this petition is how an individual or other entity “declares bankruptcy.” Filing the petition also generally operates to stop action by creditors to collect their debts, a feature of the bankruptcy process described more fully below.

The voluntary petition also provides the bankruptcy court with the basic information needed to begin the case. Although some of the information asked for in Official Form 1 will be repeated in greater detail in the schedules and statements that also must be filed, the court needs certain data immediately to make a rough estimate of the resources needed to handle the case, to monitor multiple and repeat filings, to assign cases to judges, and to provide certain statistical information that the court is required by law to compile.

II. APPLICABLE LAW AND RULES

Filing a voluntary petition with a bankruptcy court under a chapter of the Bankruptcy Code (chapter 7, 9, 11, 12, or 13) starts a bankruptcy case under that chapter. 11 U.S.C. §§ 301, 302. It also constitutes an “order for relief.” 11 U.S.C. §§ 301, 302. Similarly, a joint case is started by the filing of a single petition by an individual and that individual’s spouse. 11 U.S.C. § 302.

Section 109 of the Bankruptcy Code sets forth the debtor’s eligibility requirements for filing under chapters 7, 9, 11, 12, and 13. In addition, a chapter 11 debtor that qualifies under section 101 may elect to be treated as a “small business.” Specific requirements regarding a debtor’s eligibility to file under the various chapters are discussed below under “Chapter or Section of Bankruptcy Code Under Which the Petition is Filed.”

Rule 1002 of the Federal Rules of Bankruptcy Procedure (referred to as “Bankruptcy Rule” or “Fed. R. Bankr. P.”) requires a petition to be filed with the clerk of court. The case should be filed in an appropriate bankruptcy court location (venue), based on the criteria established in 28 U.S.C. § 1408, discussed below under “Venue.”

The filing of a bankruptcy case requires, in addition to the petition, the filing of schedules listing the debtor’s property and debts, a statement of financial affairs, and several other documents. These include mailing list or “matrix” containing the names and addresses of the creditors and others that should receive notices from the court in the case. 11 U.S.C. § 521; Fed. R. Bankr. P. 1007; local rules of each court. Each bankruptcy court has its own requirements concerning the format of the mailing list, and anyone planning to file a bankruptcy case should contact the clerk’s office ahead of time to obtain information about the specific requirements of the court in which the case will be filed. (See instructions under “United States Bankruptcy Court,” below). If the schedules and other documents are not prepared and ready to be filed at the same time the petition is filed, Bankruptcy Rule 1007(c) allows 15 days for completing and filing them. The mailing list, however, must accompany the petition. Fed. R. Bankr. P. 1007(c). Moreover, in a case under chapter 9, 11, 12, or 13 of the Code, a plan for repaying creditors must be filed according to the time limits and criteria set forth in 11 U.S.C. §§ 941, 1121, 1221, 1321, and Bankruptcy Rules 3015, 3016.

By signing, filing, or submitting a petition, schedule, statement, or other paper with the court, the debtor and the debtor’s attorney (if any) are certifying—to the best of each person’s knowledge, information and belief, formed after an inquiry reasonable under the circumstances—that the petition, schedule, statement, or other paper meets

the evidentiary and legal standards set out in Bankruptcy Rule 9011(b). Under the rule, each person also certifies that the petition, schedule, statement, or other paper is not being presented to the court for any improper purpose such as causing unnecessary delay or to harass. After notice and an opportunity to respond, the court may sanction violations of the rule. Fed. R. Bankr. P. 9011(c).

Before a bankruptcy case is commenced by an individual whose debts are primarily consumer debts, the clerk must give written notice to the individual that indicates each chapter of the Bankruptcy Code under which the individual may proceed. 11 U.S.C. § 342(b). The debtor may receive the notice by reading and signing a copy of procedural form 201, which is included in Part II of this Manual. (Consumer debts are debts incurred by individuals primarily for personal, family, or household purposes. 11 U.S.C. § 101(8).)

The signature block on Official Form 1 for individual chapter 7 consumer debtors includes a declaration that the debtor is aware of the debtor's right to proceed under chapters 7, 11, 12, and 13 and the relief available under each chapter. Exhibit B, which is to be completed by the attorney for individual consumer debtors, includes the attorney's declaration that the attorney has advised the debtor that the debtor may proceed under chapter 7, 11, 12, or 13 and has explained the relief available under each chapter. The declarations were added to Official Form 1 by section 322 of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L.98-353.

In addition to the petition, lists, schedules, and statements, Bankruptcy Rule 1006(a) requires every petition to be accompanied by the filing fee required by law. See 28 U.S.C. § 1930(a). In certain cases, however, an individual debtor may file an application to pay the filing fee in installments. Fed. R. Bankr. P. 1006(b). Other miscellaneous fees have been prescribed in the Bankruptcy Court Miscellaneous Fee Schedule issued in accordance with 28 U.S.C. § 1930(b). (See "Filing Fee" below).

The filing of a petition "operates as a stay, applicable to all entities." 11 U.S.C. § 362(a). This stay takes effect automatically, immediately upon the filing of a petition. The automatic stay essentially places a freeze on the collection of debts incurred before the filing of the petition. Creditors must cease all existing collection activities and are forbidden to initiate new ones. Section 362 provides a list of specific actions from which the debtor and the debtor's property are protected under the stay, as well as various exceptions to the stay.

It is important to remember that the filing of a bankruptcy case is a public transaction. The information on file with the court will remain open to review by any entity, including any person, estate, trust, governmental unit, and the United States trustee. 11 U.S.C. §§ 101, 107. In many bankruptcy courts, papers filed in cases may be viewed on the court's Internet website in addition to being available for review in the clerk's office.

A debtor has a right to amend a voluntary petition as a matter of course at any time before the case is closed. Fed. R. Bankr. P. 1009(a). Bankruptcy Rule 1009(a) requires the debtor to give notice of any amendment to the trustee and to any entity affected by the amendment.

III. DIRECTIONS

United States Bankruptcy Court

Debtors must identify the judicial district in which they intend to file the petition, for example, "Eastern District of California." To find the correct name of the district, debtors may refer to the local telephone directory, which should have a listing in the blue pages for "United States Government." Debtors should look under category "C"

for courts and locate the listing for “District Court for the . . .” The bankruptcy court will be listed under the district court. Some telephone directories may list courts for more than one federal judicial district. If a debtor is in doubt about the name of the district, the debtor should check with the bankruptcy court clerk’s office before proceeding.

Names/Identification Numbers

Bankruptcy Rule 1005 requires a debtor filing a voluntary petition to “include the name, social security number and employer’s tax identification number of the debtor and all other names used by the debtor within six years before filing the petition.” For example, all names used by the debtor, including trade names, names used in doing business, former married name(s), and maiden name (if used within six years before filing the petition) should be furnished in the space provided. If there is not sufficient room for all such names on the form itself, the list should be continued on an additional sheet attached to the petition. The debtor’s name also should be inserted at the top of the second page of Official Form 1.

Separate spaces are provided for the name, address, and other information on joint debtors filing bankruptcy together in a single (joint) case. Only a husband and wife may file a joint bankruptcy case. 11 U.S.C. § 302. If the bankruptcy case is filed by one person, a corporation, or a partnership, the “joint debtor” spaces on the petition should be left blank.

Complete information assists the creditors to (1) identify the debtor when they receive notices and orders, (2) comply with the automatic stay, (3) file a proof of claim, and (4) exercise other rights given to them by the Bankruptcy Code. It is important to ensure that all creditors know about the bankruptcy proceeding and are allowed to exercise their rights in the case. Debts owed to creditors who are not given proper notice of the bankruptcy may not be “discharged” or “forgiven,” and the debtor may continue to be liable for their payment despite having completed the bankruptcy case. Therefore, it is essential to provide all means of identification of both the debtor and any joint debtor.

Addresses/Location of Principal Assets

The form requires both a street address and any separate mailing address, as well as any separate addresses used by a joint debtor. Thus, the debtor(s) must include the complete street address and mailing address, if different, in the appropriate boxes. Married debtors living together can write “same” in the joint debtor address box. If an individual, the debtor must state the county of residence in the boxes provided. If the debtor is a business, the debtor should state the county where the principal place of business is located. A business debtor should designate the location of the principal assets of the debtor, if different from the street address.

Venue

An individual generally should file a bankruptcy case in the federal judicial district in which the individual resides or maintains a domicile. In a business case, the debtor should file in the district in which the debtor maintains a domicile, a residence, a principal place of business, or in which the debtor’s principal assets are located. If the debtor has not maintained a domicile, residence, principal place of business in the United States, or principal assets in the United States, in the district for the entire 180 days before filing the bankruptcy case, the debtor should file in the district in which its domicile, residence, principal place of business, or principal assets were located for the longest portion of the 180 days. 28 U.S.C. § 1408. This provision applies also to a

corporation, partnership, or other entity. For this purpose, a corporation has a domicile in its state of incorporation. A corporation, partnership, or other entity also can file in any district in which its “affiliate,” as defined in section 101 of the Bankruptcy Code, general partner, or partnership has a bankruptcy case pending. Debtors should check the appropriate box, to indicate the basis for the choice of venue.

Type of Debtor

A debtor can be an individual or individuals, a corporation, a partnership, a railroad, a stockbroker, or a commodity broker. (Bankruptcy Rule 1004 requires that all general partners consent to the petition; if they do not, the case must be filed as “involuntary,” using Official Form 5.) If a debtor does not fit into any of these categories, a box labeled “other” is provided.

Nature of Debts

A consumer debt is defined in section 101 of the Bankruptcy Code as a debt incurred by an individual primarily for a personal, family, or household purpose. If the debtor is a corporation or partnership, the debtor should check the box marked “Business.” Even in a case filed by an individual or married couple, if debt related to operation of a business predominates, the debtor should check the box marked “Business.”

Small Business

A chapter 11 debtor that qualifies as a “small business” under section 101 of the Bankruptcy Code may elect special expedited treatment under chapter 11. If a debtor is a small business as defined in section 101 of the Bankruptcy Code, the court may order that a creditors’ committee not be appointed, even if the debtor has not elected to be treated as a small business. The court may conditionally approve a disclosure statement and combine the final hearing on the disclosure statement with the confirmation hearing. A separate disclosure statement hearing is not mandatory. 11 U.S.C. §§ 1102(a)(3), 1125(f). In addition, the debtor has a shortened period of time (100 days from the date of the filing of the petition) within which only the debtor may file a plan. 11 U.S.C. § 1121(e). Accordingly, the form requires a small business debtor, filing under chapter 11, to identify itself by checking the appropriate box. Actual election to be treated as a small business is *not* required at the time the petition is filed, but the petition offers a small business chapter 11 debtor an opportunity to make the election at the commencement of the case by checking the appropriate, optional box.

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed

Only a “person” (defined by section 101 of the Bankruptcy Code, to include an individual, partnership, and corporation) that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor. 11 U.S.C. § 109(a). Section 109 of the Bankruptcy Code also states the eligibility requirements for filing under various chapters. Once a case is filed under a certain chapter, various rights and duties arise for both the debtor and creditors. Although the case can be converted to another chapter later in the proceeding, it is important to file under the chapter that best suits the debtor’s needs, and under which the debtor is legally able to file. The following is a brief summary of the requirements of each chapter:

I. Chapter 7: A “person” (defined by section 101 of the Bankruptcy Code to include an individual, partnership, and corporation, but not a governmental unit) may be a debtor under chapter 7 only if that person is not a (1) railroad or (2) an insurance company, bank, small business investment company, or credit union, as specified in

section 109(b) of the Bankruptcy Code. 11 U.S.C. § 109(b). Stockbrokers and commodity brokers can only file under this chapter, which contains special provisions governing their cases.

II. **Chapter 9:** Only a municipality or municipal corporation authorized by state law to file bankruptcy may be a debtor under chapter 9. 11 U.S.C. § 109(c).

III. **Chapter 11:** Only a person that may be a debtor under chapter 7 (except a stockbroker or a commodity broker) and a railroad may be a debtor under chapter 11. 11 U.S.C. § 109(d).

IV. **Chapter 12:** Only a “family farmer,” as defined in section 101 of the Bankruptcy Code, with regular annual income may be a debtor under chapter 12. 11 U.S.C. § 109(f).

V. **Chapter 13:** Relief under chapter 13 is limited to an individual, or individual and spouse, with regular income, who owes (on the date of the filing of the petition) less than \$269,250 in unsecured debts (i.e., those for which a creditor does not have a lien or, if the property on which a creditor has a lien is not worth enough to pay the creditor in full, that portion of the debt which exceeds the value of any pledged property, or “collateral”) and less than \$807,750 in secured debts (i.e., those for which a creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have a lien on the property). If the debt(s) or account(s) owed is contingent or unliquidated, chapter 13 may be available even to a debtor whose creditors assert that the debtor owes amounts higher than the limits set forth above. 11 U.S.C. § 109(e). (A claim is contingent if the debtor’s liability depends on the occurrence of a certain event, such as where the debtor is a cosigner on another person’s loan, and that person fails to pay. A claim is unliquidated when the amount owed has not been determined.)

VI. **Sec. 304—Case Ancillary to Foreign Proceeding:** A case ancillary to a foreign proceeding that meets the criteria of 11 U.S.C. § 304 may be commenced by the filing of a petition with the bankruptcy court by a foreign representative.

Debtors should check the box that indicates the chapter or section of the Code under which the petition is filed.

Filing Fee

Every case requires the payment of a filing fee. Filing fees for all chapters of the Bankruptcy Code are prescribed in section 1930(a) of title 28, United States Code (28 U.S.C. § 1930(a)). As of January 1, 2000, the filing fee for a chapter 7 or chapter 13 case is \$155, a chapter 9 case is \$300, a chapter 11 case is \$800, and a chapter 12 case is \$200.

A person filing a bankruptcy case also must pay a \$30 administrative fee in addition to the filing fee prescribed under 28 U.S.C. § 1930(a). Chapter 7 debtors must also pay a \$15 trustee surcharge. These miscellaneous fees (\$30 administrative fee and \$15 trustee surcharge) are part of the Bankruptcy Court Miscellaneous Fee Schedule prescribed in accordance with 28 U.S.C. § 1930(b). Thus, the fees required to file a chapter 7 case total \$200, whereas the fees to file a chapter 13 case total \$185.

Bankruptcy Rule 1006 requires that an individual debtor either: 1) pay the fee with the filing of the petition or 2) file a completed application to pay the fee in installments. The court will consider and may approve a debtor’s application to pay in installments. The rule limits the number of installments to four, and the final installment must be paid not later than 120 days after filing the petition. The court can extend the time of any installment, but the debtor must file a motion explaining the reason an extension is needed. In any case, the last installment must be paid not

later than 180 days after filing the petition. The miscellaneous fees mentioned above may also be paid in installments.

To pay the fees in installments, Official Form 3 must be completed and filed with the petition. If the debtor will pay the fees in installments, the filing fee must be paid in full before the debtor or chapter 13 trustee may pay an attorney or any other person who renders services to the debtor in connection with the case. Fed. R. Bankr. P. 1006.

Check the appropriate box on Official Form 1 to indicate whether the fee is being paid or an application to pay in installments is being filed.

Statistical/Administrative Information

The debtor is requested to predict whether funds will be available for distribution to unsecured creditors by checking one of the two boxes provided. On the basis of the information provided by the debtor, the clerk may notify creditors in a chapter 7 case that it appears there are no assets from which they may be paid and it is unnecessary for them to file claims at that time.

The debtor is asked to indicate in the boxes provided the estimated number of creditors, amount of assets, and amount of liabilities. This information is used by the clerk to complete statistical reports that are required by law, see 28 U.S.C. § 604, and to advise the court of what to expect from the case in terms of size and time.

Prior Bankruptcy Case Filed Within Last 6 Years

Under section 727(a)(8) of the Bankruptcy Code, a debtor is not entitled to a chapter 7 discharge if the debtor has been granted a discharge in a chapter 7 or chapter 11 case begun within six years before the date of the filing of the petition. A chapter 7 discharge order eliminates a debtor's legal obligation to pay any debts (with some exceptions) that existed on the date the bankruptcy case was filed. Under section 727(a)(9) of the Code a debtor is not entitled to a chapter 7 discharge if the debtor received a discharge in a chapter 12 or 13 case commenced within six years before the date of the filing of the petition, unless (1) the plan payments totaled 100% of the allowed unsecured claims, or (2) the plan payments totaled 70% of such claims and the debtor proposed the plan in good faith and it was the debtor's best effort. Section 109(g) of the Bankruptcy Code restricts repeat filings at intervals shorter than 180 days under certain circumstances even if no discharge was granted.

Disclosure of earlier bankruptcy filings puts the court and any trustee on notice that an investigation may be needed. It is intended to alert the trustee to cases in which an objection to discharge pursuant to section 727(a)(8) or (a)(9) or a motion to dismiss under section 109(g) may be appropriate. The debtor may be called upon to explain the circumstances of having filed multiple cases. These may not prevent a discharge in the new case, but the court will need to make a determination based on the actual facts in each case.

The debtor is asked to state the location in which the prior bankruptcy case was filed, for example, "District of Maryland," in the space provided. The case number of the prior case and the date the petition was filed should be placed in the appropriate spaces. Debtors should be sure to list all prior bankruptcy cases and attach additional sheets, if necessary.

Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor

The information about pending, related bankruptcy cases signals the clerk to assign the case to the judge to whom any related case has been assigned. Debtors are

requested to place the name of any spouse, partner, or affiliate that has a pending case (one that has not been closed) under the heading "Name of Debtor." The debtor should include the case number, date the petition was filed, relationship, district where case is pending, and the judge assigned to the case in the spaces provided. Additional sheets may be attached if there is more than one pending case.

Signatures

The section states that the debtor requests relief in accordance with the chapter of title 11 (the Bankruptcy Code) specified on the first page of the petition. Signing also indicates to the court that the debtor, in fact, is requesting relief under the Bankruptcy Code. Signing and filing combine to make the petition operative, that is, to make the petition a legally effective document.

Bankruptcy Rule 1008 requires all petitions to be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746. The unsworn declaration on page two of the petition conforms with section 1746, which permits the declaration to be made in the language provided with the same force and effect as a sworn statement. In other words, by signing the petition, the debtor(s) is (are) declaring, under penalty of perjury, that the information in the petition is true and correct.

The debtor(s) must sign the petition in the appropriate signature block on page 2, either the "Individual/Joint" section or the "Corporation/Partnership" section. The choice of signature block should be consistent with the debtor's response to "Type of Debtor" box on page 1. Unsigned papers shall be stricken unless the omission of the signature is corrected promptly after being called to the attention of the attorney or party. Fed. R. Bankr. P. 9011(a).

An individual debtor must sign on the top line of the "Individual/Joint" section and place the date on the bottom line. A married couple filing a joint case must sign and date the petition as "debtor" and "joint debtor." If the debtor is not represented by an attorney, the debtor should include the debtor's telephone number so court personnel, the trustee, other parties in the case, and attorneys representing other parties can contact the debtor concerning matters in the case. Although the debtor's telephone number should be stated in the petition if the debtor is not represented by an attorney, the telephone number is not included in the notice of the bankruptcy filing that is sent to all creditors.

The signature section for individual and joint chapter 7 consumer debtors includes a declaration that the debtors are aware of their right to proceed under chapters 7, 11, 12, and 13 of the Code and of the relief available under each chapter. Procedural Form B 201, which is included in Part II of this Manual, summarizes the relief available under each chapter. Consumer debts are debts incurred by individuals primarily for personal, family, or household purposes, 11 U.S.C. § 101(8).

There is a separate signature block for debtors that are corporations or partnerships. Individual and joint debtors should leave this section blank. The individual authorized by the debtor entity (the corporation or partnership) to file the petition should sign the petition and include the individual's title and the date on the lines provided. By signing the petition, the authorized individual is representing that the information in the petition is true and correct, and that the individual has been authorized to file the petition on behalf of the debtor. A corporation that files a bankruptcy case must be represented by an attorney. Certain corporate debtors filing chapter 11 petitions must also complete Exhibit A discussed below.

Signature of Attorney

If an attorney is representing the debtor in the bankruptcy case, the attorney must sign and date the petition and set out the attorney's name, address, and telephone number in the spaces provided. If a law firm is representing the debtor, the attorney in the firm who is handling the case should sign and date the petition and set out the attorney's name as well as the law firm's name, address, and telephone number. Fed. R. Bankr. P. 9011(a). Debtors who are not represented by an attorney should leave this section blank.

Exhibit A

The debtor is required to complete and file Exhibit A only if the debtor is a corporation requesting relief under chapter 11 and if the debtor is required to file periodic reports with the Securities and Exchange Commission pursuant to section 13 or 15 of the Securities Exchange Act of 1934. If required, the debtor should check the box on page 2 and complete Exhibit A. The completed form supplies the SEC with information that the SEC needs to determine how actively (or whether) to monitor the chapter 11 case.

Exhibit B

Exhibit B, which is included in the petition itself, is to be signed by the attorney for individual consumer debtors. The exhibit, which is required by section 322 of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353, is a declaration that the attorney has advised the debtor(s) that the debtor(s) may proceed under chapter 7, 11, 12, or 13 of the Code and that the attorney has explained the relief available under each chapter. Debtors not represented by an attorney should leave Exhibit B blank. The signature section for chapter 7 consumer debtors includes a similar declaration by the debtors.

Certification of Non-Attorney Bankruptcy Petition Preparer

A bankruptcy petition preparer is required to sign the petition and disclose the requested information, such as name, Social Security number, address, and telephone number in the spaces provided. 11 U.S.C. § 110.

Advisory Committee Note

Form 1, the Voluntary Petition, is to be used to commence a voluntary case under chapter 7, 11, 12, or 13 of the Bankruptcy Code. A chapter 9 petition requires other allegations, (see § 109(c) of the Code), but this form may be adapted for such use. The form also may be adapted for use in filing a petition ancillary to a foreign proceeding under § 304 of the Code.

The form departs from the traditional format of a captioned pleading. All of the elements of the caption prescribed in Rule 1005 have been retained. Their placement on the page, however, has been changed to make the form compatible with electronic data processing by the clerk. The form of the caption of the case for use in other documents, formerly incorporated in Official Form No. 1, has been made a separate Form 16A.

All names used by the debtor, including trade names, names used in doing business, married names, and maiden names should be furnished in the spaces provided. If there is not sufficient room for all such names on the form itself, the list should be continued on an additional sheet attached to the petition. A complete list will enable creditors to identify the debtor properly when they receive notices and orders.

Redesign of this form into a box format also is intended to provide the court, the United States trustee, and other interested parties with as much information as possible during the 15-day period provided by Rule 1007(c), when schedules and statements may not have been filed. The box format separates into categories the data provided by the debtor, and enables the form to be used by all voluntary debtors in all chapters.

For the first time, the form requires both a street address and any separate mailing address, as well as any separate addresses used by a joint debtor. Disclosure of prior bankruptcies is new to the petition but formerly was required in the statement of financial affairs; its inclusion in the petition is intended to alert the trustee to cases in which an objection to discharge pursuant to § 727(a)(8) or (a)(9) or a motion to dismiss under § 109(g) may be appropriate. The information about pending related cases, also new to the petition, signals the clerk to assign the case to the judge to whom any related case has been assigned.

Rule 1008 requires all petitions to be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746. The unsworn declaration on page two of the petition conforms with 28 U.S.C. § 1746, which permits the declaration to be made in the manner indicated with the same force and effect as a sworn statement. The form may be adapted for use outside the United States by adding the words "under the laws of the United States" after the word "perjury."

Exhibit "A," to be attached to the petition of a corporate debtor, is for the purpose of supplying the Securities and Exchange Commission with information it needs at the beginning stages of a chapter 11 case in order to determine how actively to monitor the proceedings. Exhibit "B" was added by § 322 of Pub. L. No. 98-353, the Bankruptcy Amendments and Federal Judgeship Act of 1984. The references to chapters 11 and 12 of the Code found in Exhibit "B" and its related allegations were added by § 283(aa) of the 1986 amendments. (Pub. L. No. 99-554). This exhibit has been included in the form of the petition.

The form effects a merger of the petition and the bankruptcy cover sheet to assist the clerk in providing the statistical information required by the Director of the Administrative Office of the United States Courts pursuant to the Congressional reporting mandates of 28 U.S.C. § 604. The Director is authorized to change the particulars of the statistical portion of the form as needed in the performance of these statutory duties.

Advisory Committee Note to 1992 Amendment

The form has been amended to require a debtor not represented by an attorney to provide a telephone number so that court personnel, the trustee, other parties in the case, and their attorneys can contact the debtor concerning matters in the case.

Advisory Committee Note to 1995 Amendment

The form is amended to provide space for signing by a "bankruptcy petition preparer," as required under section 110 of the Code, which was added by the Bankruptcy Reform Act of 1994. In addition to signing, a bankruptcy petition preparer is required by section 110 to disclose the information requested. All signatories of Form 1 are requested to provide the clerk's office with a telephone number.

A chapter 11 debtor that qualifies as a "small business" under section 101 of the Code, as amended by the 1994 Act, may elect special, expedited treatment under amendments made to chapter 11 by the 1994 Act. The court may order that a creditors committee not be appointed in a small business case. Accordingly, the first page of the petition is amended to require a small business filing under chapter 11 to identify itself. The petition also is amended to offer a small business chapter 11 debtor an opportunity to exercise its right to elect to be considered a small business at the commencement of the case.

Several clarifying and technical amendments also have been made to indicate that a debtor is to check only one box with respect to "Type of Debtor" and "Nature of Debt," to clarify the intent that the individual signing on behalf of a corporation or partnership is authorized to file the petition, and to require a debtor to represent that it is eligible for relief under the chapter of title 11 specified in the petition.

Advisory Committee Note to 1997 Amendment

The form has been substantially amended to simplify its format and make the form easier to complete correctly. The Latin phrase "In re" has been deleted as unnecessary. The amount of information requested in the boxes labeled "Type of Debtor" and "Nature of Debt" has been reduced, and the reporting by a corporation of whether it is a publicly held entity has been moved to Exhibit "A" of the petition. The box labeled "Representation by Attorney" has been deleted; the information it contained is requested in the signature boxes on the second page of the form.

In the statistical information section, the labels on the ranges of estimated assets and liabilities have been rewritten to improve the accuracy of reporting. The asset/liability range of \$10 million to \$100 million has been divided into two categories to promote better statistical reporting of business cases. Requests for information in chapter 11 and chapter 12 cases concerning the number of the debtor's employees and equity security holders have been deleted.

The second page of the form has been simplified so that a debtor need only sign the petition once. The request for information concerning the filing of a plan has been deleted.

Exhibit "A" has been simplified. In addition, the category of chapter 11 debtors required to file Exhibit "A" is modified to include a corporation, partnership, or other entity, but only if the debtor has issued publicly-traded equity securities or debt instruments. Most small corporations will not be required to file Exhibit "A."

Form 2

**DECLARATION UNDER PENALTY OF PERJURY ON BEHALF
OF A CORPORATION OR PARTNERSHIP**FORM B2
(6/90)

I, [the president *or* other officer *or* an authorized agent of the corporation] [*or* a member *or* an authorized agent of the partnership] named as the debtor in this case, declare under penalty of perjury that I have read the foregoing [list *or* schedule *or* amendment *or* other document (describe)] and that it is true and correct to the best of my information and belief.

Date _____

Signature _____

(Print Name and Title)

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 2
DECLARATION UNDER PENALTY OF PERJURY ON BEHALF
OF A CORPORATION OR PARTNERSHIP

I. INTRODUCTION

Official Form 2 is for corporate or partnership debtors. Individuals and joint debtors will not need to use this form. The form is used as a declaration on behalf of a corporate or partnership debtor and is generally signed by the individual who is authorized by the debtor entity to file the bankruptcy petition or, if included in an amendment or other document filed later in the case, by another individual authorized by the debtor entity or by the court to act for the debtor.

II. APPLICABLE LAW AND RULES

Federal Rule of Bankruptcy Procedure 1008 requires all petitions, lists, schedules, statements, and amendments to be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746. The unsworn declaration on Official Form 2 conforms with section 1746, which permits the declaration to be made in the language provided with the same force and effect as a sworn statement.

Official Form 2 or adaptations of the form have been incorporated into the official forms of the petitions, schedules, and statement of financial affairs. See Official Forms 1, 5, 6, and 7. The form is set forth separately for inclusion in or appending to other papers required by the rules to be verified or contain an unsworn declaration, such as the list of 20 largest creditors or the list of equity security holders in a chapter 11 case. If any document containing an unsworn declaration later is amended, the amendment also must contain an unsworn declaration.

III. DIRECTIONS

The individual authorized by the debtor entity (corporation, partnership, etc.) or the court to act for the debtor should sign the declaration for any document submitted that requires a declaration and should include that individual's title and the date on the lines provided.

By signing the declaration, the debtor's authorized agent is declaring, under penalty of perjury, that the information in the document submitted is true and correct and that the individual has been authorized to act as the agent on behalf of the debtor.

Advisory Committee Note

This form is derived from former Official Form No. 4.

Rule 1008 requires that all petitions, lists, schedules, statements, and amendments thereto be verified or contain an unsworn declaration conforming with 28 U.S.C. § 1746. This form or adaptations of the form have been incorporated into the official forms of the petitions, schedules, and statement of financial affairs. See Official Forms 1, 5, 6, and 7. The form has been amended for use in connection with other papers required by these rules to be verified or contain an unsworn declaration.

Form 3

APPLICATION AND ORDER TO PAY
FILING FEE IN INSTALLMENTS

U.S. COURT OF
APPEALS

United States Bankruptcy Court

_____ District Of _____

In re _____
Debtor

Case No. _____

Chapter _____

APPLICATION TO PAY FILING FEE IN INSTALLMENTS

- 1 In accordance with Fed. R. Bankr. P. 1006, I apply for permission to pay the Filing Fee amounting to \$ _____ in installments.
- 2 I certify that I am unable to pay the Filing Fee except in installments.
- 3 I further certify that I have not paid any money or transferred any property to an attorney for services in connection with this case and that I will neither make any payment nor transfer any property for services in connection with this case until the filing fee is paid in full.
- 4 I propose the following terms for the payment of the Filing Fee: *
- \$ _____ Check one ☐ With the filing of the petition, or
\$ _____ ☐ On or before _____
\$ _____ on or before _____
\$ _____ on or before _____
\$ _____ on or before _____
- * The number of installments proposed shall not exceed four (4), and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition. Fed. R. Bankr. P. 1006(b)(2).
- 5 I understand that if I fail to pay any installment when due my bankruptcy case may be dismissed and I may not receive a discharge of my debts.

Signature of Attorney _____ Date _____

Signature of Debtor _____ Date _____
(In a joint case, both spouses must sign.)

Name of Attorney _____

Signature of Joint Debtor (if any) _____ Date _____

CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION (See 11 U.S.C. § 110)

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document. I also certify that I will not accept money or any other property from the debtor before the filing fee is paid in full.

Printed or Typed Name of Bankruptcy Petition Preparer _____

Social Security No. _____

Address: _____

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

Signature of Bankruptcy Petition Preparer _____

Date _____

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fine, or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156

Form B3 continued
(9/97)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF _____

In re _____
Debtor

Case No. _____

Chapter _____

ORDER APPROVING PAYMENT OF FILING FEE IN INSTALLMENTS

IT IS ORDERED that the debtor(s) may pay the filing fee in installments on the terms proposed in the foregoing application.

IT IS FURTHER ORDERED that until the filing fee is paid in full the debtor shall not pay any money for services in connection with this case, and the debtor shall not relinquish any property as payment for services in connection with this case.

BY THE COURT

Date: _____

United States Bankruptcy Judge

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 3**APPLICATION AND ORDER TO PAY FILING FEE IN INSTALLMENTS****I. INTRODUCTION**

Official Form 3 is provided only for those individual debtors who are unable to pay the filing fee in full at the time they file the bankruptcy petition. Other debtors should not complete or file this form.

II. APPLICABLE LAW AND RULES

Rule 1006(b) of the Federal Rules of Bankruptcy Procedure (referred to as "Bankruptcy Rule" or "Fed. R. Bankr. P.") allows an individual who is filing a voluntary bankruptcy petition but is unable to pay the filing fee in full at that time to file, together with the petition, an application asking for permission to pay the filing fee in installments. In addition to the filing fee, currently \$155 for chapter 7 and chapter 13, the debtor is required to pay a \$30 administrative fee in all cases and a \$15 trustee surcharge in chapter 7 cases. 28 U.S.C. § 1930(a); Bankruptcy Court Miscellaneous Fee Schedule issued in accordance with 28 U.S.C. § 1930(b). As of January 1, 2000, the total was \$200 for a chapter 7 case and \$185 for a chapter 13 case.

The debtor must state in the application that the debtor is unable to pay the filing fee except in installments, set forth the proposed dates and amounts of the installment payments, and declare that the debtor has not paid any money or transferred any property to an attorney for services in connection with the case. The debtor must sign the application.

The court may either order the debtor to pay the filing fee in full immediately or grant the debtor leave to pay the filing fee in installments according to the terms proposed by the debtor or fixed by the court. The maximum number of installments is four, and the final installment must be paid no later than 120 days after filing the petition. The court may extend the time of any installment, but the last installment must be paid no later than 180 days after filing the petition. Fed. R. Bankr. P. 1006.

The filing fee must be paid in full before the debtor or a chapter 13 trustee (in a chapter 13 case) may pay an attorney or any other person who renders services to the debtor in connection with the case. Fed. R. Bankr. P. 1006. The filing fee and any other fees payable at the start of the case must be paid in full before the court grants the debtor a discharge in a chapter 7 case. Fed. R. Bankr. P. 4004(c)(1)(f).

Official Form 3 is a "document for filing" that may be prepared by a "bankruptcy petition preparer," as defined in 11 U.S.C. § 110. A signature line is provided for such preparer. In addition to signing, a bankruptcy petition preparer is required by section 110 to disclose the information requested. A bankruptcy petition preparer may not accept a fee until the filing fee has been paid in full. Fed. R. Bankr. P. 1006(b)(3). If more than one person prepared the form, additional sheets that conform to the certification on the official form should be completed, signed, and attached. A bankruptcy petition preparer, who has completed the Application to Pay the Filing Fee in Installments must provide the debtor with a copy.

There is also a signature line for a debtor's attorney. Fed. R. Bankr. P. 9011.

The form was revised in 1997. The changes included adding an acknowledgment by the debtor of the potential consequences of failing to pay an installment when due and clarifying that the debtor is not disqualified from paying the filing fee in installments because the debtor has paid money to a bankruptcy petition preparer.

III. DIRECTIONS

The person preparing the application should complete the caption with the information indicated, except the case number, which will be inserted by the clerk's office after the bankruptcy case is filed. The caption appears at the top of the page and conforms to Form 16B, Caption (Short Title). Instructions for completing Form 16B may be found following that form.

The amount of the filing fee should be included in the first paragraph. For the purpose of the application, "filing fee" means the filing fee prescribed by 28 U.S.C. § 1930(a) and any other fees prescribed by the Judicial Conference pursuant to 28 U.S.C. § 1930(b) that are payable to the clerk upon the commencement of a case under the Bankruptcy Code. Fed. R. Bankr. P. 1006(a). As of January 1, 2000, the combined "filing fee" was \$200 for chapter 7 cases and \$185 for chapter 13 cases.

The debtor should fill in the blanks in the fourth paragraph with the debtor's proposed terms of payment, including the dollar amount and date of each payment. The debtor should specify on the first line whether the first payment will be made with the filing of the petition or on a specified date. It is important to remember that the maximum number of installments is four and the final installment must be paid no later than 120 days after filing the petition, unless the court extends the time for any installment.

The debtor should date the application and sign it on the signature line provided for the applicant. If the case is filed by joint debtors, both debtors should date and sign the application. If the debtor is represented by an attorney, the attorney must sign on the signature line provided for the attorney for the applicant.

Certification and Signature of Non-Attorney Bankruptcy Petition Preparer

Bankruptcy petition preparers are required to print or type the preparer's name, address, and social security number on the lines provided. The preparer must sign and date the application on the lines provided. If more than one person prepared the document, additional signed sheets conforming to the Official Form must be attached for each person.

Order

After completing the caption, debtors and preparers should leave the rest of this portion of the form blank. The order is included for the convenience of the court. If the court approves the application to pay the filing fee in installments, the bankruptcy judge will sign and date the order.

Advisory Committee Note

This form is derived from former Official Form No. 2.

A statement that the applicant is unable to pay the filing fee except in installments has been added as required by Rule 1006(b).

Advisory Committee Note to 1995 Amendment

This form is a "document for filing" that may be prepared by a "bankruptcy petition preparer" as defined in 11 U.S.C. § 110, which was added to the Code by the Bankruptcy Reform Act of 1994; accordingly, a signature line is provided for such preparer. In addition to signing, a bankruptcy petition preparer is required by section 110 to disclose the information requested. A signature line for a debtor's attorney also is added, as required by Rule 9011.

Advisory Committee Note to 1997 Amendment

The form has been reorganized and the paragraphs numbered. The debtor's certification concerning payment for services in the case has been placed ahead of the statement of proposed terms for installment payment of court fees. Acknowledgement by the debtor of the potential consequences of failure to pay any installment when due has been added. (See 11 U.S.C. § 707(a)(2).) The language of the form also has been changed to conform to Rule 1006 and to clarify that a debtor is not disqualified from paying the filing fee in installments because the debtor has paid money to a bankruptcy petition preparer.

Form 4

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

Form B4
11/92

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____

In re _____,
Debtor

Case No. _____
Chapter _____

[Designation of Character of Paper]

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed.R.Bankr.P. 1007(d) for filing in this chapter 11 [or chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims.

(1)	(2)	(3)	(4)	(5)
<i>Name of creditor and complete mailing address including zip code</i>	<i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	<i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	<i>Indicate if claim is contingent, unliquidated, disputed or subject to setoff</i>	<i>Amount of claim (if secured also state value of security)</i>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Date: _____

Debtor

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, [the president or other officer or an authorized agent of the corporation] [or a member or an authorized agent of the partnership] named as the debtor in this case, declare under penalty of perjury that I have read the foregoing [list or schedule or amendment or other document (describe)] and that it is true and correct to the best of my information and belief.

Date _____

Signature _____

(Print Name and Title)

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 4

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

I. INTRODUCTION

Official Form 4 is to be completed by a debtor in a chapter 11 case or a debtor in a chapter 9 municipality case. Other debtors should not complete or file this form.

II. APPLICABLE LAW AND RULES

Rule 1007(d) of the Federal Rules of Bankruptcy Procedure (referred to as "Bankruptcy Rule" or "Fed. R. Bankr. P.") requires chapter 11 and chapter 9 debtors to file, with the petition, a list containing the name, address, and claim of the creditors holding the 20 largest unsecured claims. Excluded from this list are any "insiders," as defined in 11 U.S.C. § 101; and secured creditors, unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. Debtors in an involuntary chapter 11 case are required to file this list within two days after entry of the order for relief under section 303(h) of the Bankruptcy Code.

Definitions:

(1) Insider—Debtors should refer to section 101 of the Bankruptcy Code for the definition of an "insider."

(2) Secured Claim—A claim is secured if the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property. A claim is secured only to the extent to which the value of the creditor's interest in the property equals the amount of the debt. Any amount not protected by collateral is unsecured. 11 U.S.C. § 506. Examples of liens are a mortgage on real estate and a security interest in a car, boat, television set or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien.

(3) Unsecured Claim—If a claim is not a secured claim, it is unsecured. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

(4) Contingent Claim—A claim is contingent if the debtor's liability depends on the occurrence of a certain event, such as when the debtor is a cosigner on another person's loan, and that person fails to pay.

(5) Unliquidated Claim—An unliquidated claim is a claim the amount of which is not completely certain. The claim exists, but the amount is presently unknown. For example, a debtor may have been at fault in a car accident, but there is no judgment yet establishing the amount of the debtor's liability. The debtor will have to estimate the amount of such a claim and designate it as unliquidated.

(6) Disputed Claim—A claim is disputed when the debtor and creditor do not agree on the debtor's liability or on the amount of the debt.

(7) Setoff—A "setoff is when all or part of the debt owed by the debtor to the creditor is "canceled out" by a pre-existing debt owed by the creditor to the debtor.

III. DIRECTIONS

(1) Each creditor's name, complete mailing address, and zip code should be listed on the form.

(2) The name, telephone number, complete mailing address, and zip code of the employee, agent, or department of the creditor should be placed on the form. Debtors are asked to list an individual who is familiar with the creditor's claim and who may be contacted, if possible.

(3) The nature of the claim (such as a trade debt, bank loan, government contract, etc.) should be described on the form.

(4) If any claim is contingent, unliquidated, disputed, or subject to setoff that fact should be stated.

(5) The amount of the claim should be listed. Secured creditors should not be listed unless the value of the collateral is so much less than the amount of the claim that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If the claim is partially secured, the value of the security should be stated. The debtor should indicate the amount of the secured and unsecured portions of the claim on the form.

Bankruptcy Rule 1008 requires all petitions, lists, schedules, statements, and amendments to be verified or contain an unsworn declaration conforming with 28 U.S.C. § 1746. Official Form 2, Declaration Under Penalty Of Perjury On Behalf Of a Corporation Or Partnership, is incorporated for this purpose and should be signed by the authorized agent for the debtor and attached to the signed and dated form. An individual debtor should modify the declaration as appropriate.

Advisory Committee Note

This form is derived from former Official Form No. 9.

In conformity with Rule 1007(d) and in recognition of the notice function served by this list under Rule 4001, governmental units must be listed if they are among the creditors holding the 20 largest claims.

Rule 1008 requires all lists to be verified or contain an unsworn declaration conforming with 28 U.S.C. § 1746.

Advisory Committee Note to 1992 Amendment

The form has been amended to delete reference to the specific subsection of 11 U.S.C. § 101 in connection with the definition of the term "insider." Section 101 of the Bankruptcy Code contains numerous definitions, and statutory amendments from time to time have resulted in the renumbering of many of its subsections. The more general reference will avoid the necessity to amend the form further in the event of future amendments to § 101.

Form 5

INVOLUNTARY PETITION

FORM 85
(6/90)

United States Bankruptcy Court District of _____		INVOLUNTARY PETITION
IN RE (Name of debtor—If individual: Last, First, Middle)		ALL OTHER NAMES used by debtor in the last 6 years (Include married, maiden, and trade names.)
SOC. SEC./TAX I.D. NO. (If more than one, state all)		
STREET ADDRESS OF DEBTOR (No. and street, city, state, and zip code)		MAILING ADDRESS OF DEBTOR (If different from street address)
COUNTY OR RESIDENCE OR PRINCIPAL PLACE OF BUSINESS		
LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR (If different from previously listed addresses)		
CHAPTER OF BANKRUPTCY CODE UNDER WHICH PETITION IS FILED		
<input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11		
INFORMATION REGARDING DEBTOR (Check applicable boxes)		
Petitioners believe <input type="checkbox"/> Debts are primarily consumer debts <input type="checkbox"/> Debts are primarily business debts (Complete sections A and B)		TYPE OF DEBTOR <input type="checkbox"/> Individual <input type="checkbox"/> Corporation Publicly Held <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation Not Publicly Held <input type="checkbox"/> Other _____
A. TYPE OF BUSINESS (Check one) <input type="checkbox"/> Professional <input type="checkbox"/> Transportation <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Retail/Wholesale <input type="checkbox"/> Manufacturing/Construction <input type="checkbox"/> Real Estate <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Other _____		B. BRIEFLY DESCRIBE NATURE OF BUSINESS
VENUE		
<input type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in the District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.		
<input type="checkbox"/> A bankruptcy case concerning debtor's affiliate, general partner or partnership is pending in this District		
PENDING BANKRUPTCY CASE FILED BY OR AGAINST ANY PARTNER OR AFFILIATE OF THIS DEBTOR (Report information for any additional cases on attached sheets.)		
Name of Debtor	Case Number	Date
Relationship	District	Judge
ALLEGATIONS (Check applicable boxes)		COURT USE ONLY
1. <input type="checkbox"/> Petitioner(s) are eligible to file this petition pursuant to 11 U.S.C. § 303(b). 2. <input type="checkbox"/> The debtor is a person against whom an order for relief may be entered under title 11 of the United States Code. 3. a. <input type="checkbox"/> The debtor is generally not paying such debtor's debts as they become due, unless such debts are the subject of a bona fide dispute. b. <input type="checkbox"/> Within 120 days preceding the filing of this petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.		

RS
Rev. 5/1/21

Name of Debtor _____

Case No. _____
(Court use only)

TRANSFER OF CLAIM

☐ Check this box if there has been a transfer of any claim against the debtor by or to any petitioner. Attach all documents evidencing the transfer and any statements that are required under Bankruptcy Rule 1003(a).

REQUEST FOR RELIEF

Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition.

Petitioner(s) declare under penalty of perjury that the foregoing is true and correct according to the best of their knowledge, information, and belief.

X _____ Signature of Petitioner or Representative (State title)		X _____ Signature of Attorney Date
Name of Petitioner	Date signed	Name of Attorney/Firm (If any)
Name & Mailing ► Address of Individual Signing in Representative Capacity		Address
		Telephone No.
X _____ Signature of Petitioner or Representative (State title)		X _____ Signature of Attorney Date
Name of Petitioner	Date signed	Name of Attorney/Firm (If any)
Name & Mailing ► Address of Individual Signing in Representative Capacity		Address
		Telephone No.
X _____ Signature of Petitioner or Representative (State title)		X _____ Signature of Attorney Date
Name of Petitioner	Date signed	Name of Attorney/Firm (If any)
Name & Mailing ► Address of Individual Signing in Representative Capacity		Address
		Telephone No.

PETITIONING CREDITORS

Name and Address of Petitioner	Nature of Claim	Amount of Claim
Name and Address of Petitioner	Nature of Claim	Amount of Claim
Name and Address of Petitioner	Nature of Claim	Amount of Claim

Note: If there are more than three petitioners, attach additional sheets with the statement under penalty of perjury, petitioner(s) signatures under the statement and the name(s) of attorney(s) and petitioning creditor information in the format above.	Total Amount of Petitioners' Claims
---	--

_____ continuation sheets attached

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 5

INVOLUNTARY PETITION

I. INTRODUCTION

Bankruptcy cases can arise in two ways: 1) an individual, a business, or a municipality may file a voluntary petition, or 2) creditors may file an involuntary petition against an individual or business. A creditor or group of creditors is authorized to file an involuntary case against a debtor if certain criteria are met, as set forth in section 303 of the Bankruptcy Code (11 U.S.C. § 303). The first step in commencing an involuntary case is the filing of an involuntary petition, using Official Form 5, by a creditor or creditors. Creditors that file an involuntary petition against a debtor are also referred to as "petitioners."

The alleged debtor is given an opportunity to respond to the petition and contest it. If the debtor contests the petition, the court will hold a hearing to determine whether the bankruptcy case will proceed.

The requirements for filing an involuntary bankruptcy case are complex, and the penalties for improper filing are harsh. Anyone contemplating such action should consult an experienced attorney. The following information is very general and is not complete.

II. APPLICABLE LAW AND RULES

1. Section 303 of the Bankruptcy Code contains provisions for filing an involuntary petition against a person. The term "person" includes an individual, partnership, and corporation. 11 U.S.C. § 101.

2. Section 303(a) authorizes involuntary petitions to be filed only under chapters 7 and 11 of the Bankruptcy Code. Thus, creditors are prohibited from filing an involuntary petition under chapters 9, 12, and 13. In addition, an involuntary debtor may not be "a farmer, family farmer, or a corporation that is not a moneyed, business, or commercial corporation," (that is, a non-profit or charitable corporation). 11 U.S.C. § 303(a). Moreover, an involuntary petition may not be filed against a husband and wife jointly. 11 U.S.C. § 302(a).

3. Sections 303(b)(1) and (b)(2), provide that the petitioning creditors must hold claims against the debtor that are not contingent as to liability or the subject of a bona fide dispute. A contingent claim is one that depends on the occurrence of a certain event that may never happen. Although there are several complex criteria, the two basic ones are: 1) if the debtor has fewer than 12 creditors, only one creditor need file the involuntary petition, whereas, if the debtor has 12 or more creditors, at least three of the creditors must join in the petition; and 2) the claim(s) of the petitioning creditor or creditors must total at least \$10,775 more than any lien on property of the debtor securing such claim(s). In other words, there must be \$10,775 in unsecured claims, i.e., those that have no collateral and are not secured by any lien on the debtor's property.

4. In a partnership case, all general partners must consent to a voluntary bankruptcy, otherwise, it is an involuntary case. Thus, an involuntary petition against a partnership may be filed by fewer than all the general partners. Moreover, if all the general partners are already in bankruptcy, an involuntary case against the partnership may be filed by a general partner, the trustee of a general partner, or creditors of the partnership. 11 U.S.C. § 303(b)(3). Rule 1004 of the Federal Rules of Bankruptcy Procedure (referred to as "Bankruptcy Rule" or "Fed. R. Bankr. P.") requires the petitioner(s) to either send to or serve on each general partner who is not a petitioner, a copy of the petition and a summons.

5. A foreign representative of the estate in a foreign proceeding may file an involuntary case concerning such person. 11 U.S.C. §§ 303(b)(4), 304.

6. An entity that has transferred or acquired a claim for the purpose of commencing an involuntary case is not qualified to be a petitioner. Fed. R. Bankr. P. 1003(b). Otherwise, if the transfer was not made for that purpose, an entity holding a transferred or acquired claim may be a qualified petitioner if the statements and documents required by Bankruptcy Rule 1003(a) are attached to the petition. Moreover, after the petition is filed, but before the case is dismissed or relief is ordered, a creditor holding a noncontingent unsecured claim, may join in the petition. 11 U.S.C. § 303(c). Creditors will be given a reasonable opportunity to join in the petition if fewer than three creditors filed the petition, and the debtor's answer to the petition reveals the existence of 12 or more creditors. Fed. R. Bankr. P. 1003(b).

7. Bankruptcy Rule 1010 requires that on the filing of an involuntary petition, a summons with a copy of the petition be served on the debtor. Rule 4(b) of the Federal Rules of Civil Procedure (referred to as "Civil Rule" or "Fed. R. Civ. P."), incorporated by Bankruptcy Rule 7004, provides that the clerk shall issue the summons to the petitioning creditor or its attorney. It is then the responsibility of the creditor or the creditor's attorney to serve the summons and a copy of the petition on the debtor. The summons and petition must be served in person or by first class mail, in accordance with Bankruptcy Rule 7004(a) or (b). If service in person or by mail is not possible, the court may order service by mail to the last known address and by publication, as directed by the court. The summons and petition may be served on a debtor anywhere. The provisions of Bankruptcy Rule 7004(e), regarding time, and Civil Rule 4(1), regarding proof of service, apply when service is made or attempted under Bankruptcy Rule 1010. Special procedures must be followed when serving a summons and complaint in a foreign country. See Fed. R. Civ. P. 4(1).

8. The debtor, or a general partner in a partnership debtor that did not join in the petition, may file an answer to an involuntary petition. 11 U.S.C. § 303(d). Bankruptcy Rule 1011 allows the debtor 20 days to respond to the petition. If the debtor fails to respond, the court will enter an order for relief under the appropriate chapter of the Bankruptcy Code. 11 U.S.C. § 303(h); Fed. R. Bankr. P. 1013(b). If the debtor files an answer, the court will conduct a hearing and will only enter the order for relief if the court finds that the debtor is not generally paying its undisputed debts as they become due, or if within 120 days before the date of the filing of the petition, a custodian, other than a trustee, receiver, or agent authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession. 11 U.S.C. § 303(h); Fed. R. Bankr. P. 1013(a). Bankruptcy Rule 1018 sets forth the procedure to be followed in the event of a contested involuntary petition.

9. Section 303(i) authorizes the court to order creditors that file an improper involuntary petition to pay the costs or a reasonable attorney's fee of the debtor. If the court finds that the involuntary petition was filed in bad faith, the court can order the petitioning creditors to pay for all damages proximately caused by the filing or may assess punitive damages.

III. DIRECTIONS

United States Bankruptcy Court

Petitioning creditors must identify the federal judicial district in which they will to file the involuntary petition, for example, "Eastern District of California." To find the correct name of the district, creditors may refer to the local telephone directory, which

should have a listing in the blue pages for "United States Government." Petitioners should look under category "C" (for courts) and locate the listing for "District Court for the..." The bankruptcy court will be listed under the district court. Some telephone directories may list courts for more than one federal judicial district. If a petitioner is in doubt about the name of the district, the petitioner should check with the bankruptcy court clerk's office before proceeding.

Names/Identification Numbers

Bankruptcy Rule 1005 requires the petition to "include the name, social security number and employer's tax identification number of the debtor and all other names used by the debtor within six years before filing the petition. If the petition is not filed by the debtor, it shall include all names used by the debtor which are known to petitioners." For example, and to the extent known to the creditors, all names used by the debtor, including trade names, names used in doing business, former married name(s), and maiden name should be furnished in the spaces provided. If there is not sufficient room for all such names and identification numbers on the form itself, the list should be continued on an additional sheet attached to the petition.

Addresses/Location of Principal Assets

Petitioners are asked to list both a street address and any separate mailing address used by a debtor. Thus, the petitioner must include the complete street address and mailing address, if different, in the appropriate boxes. Zip codes should be included. If the debtor is an individual, the petitioner must state the debtor's county of residence within the box provided. If the debtor is a business, the petitioner should state the county where the principal place of business is located. Petitioners should designate the location of the principal assets of a business debtor, if different from the street address.

Chapter of Bankruptcy Code Under Which the Petition is Filed

Section 303(a) authorizes involuntary petitions to be filed only under chapters 7 and 11. Thus, creditors are prohibited from filing an involuntary petition under chapters 9, 12, and 13. Moreover, an involuntary debtor may not be "a farmer, family farmer, or a corporation that is not a moneyed, business, or commercial corporation." 11 U.S.C. § 303(a). That is, a creditor should not file an involuntary petition against a farmer or a non-profit or charitable corporation. Moreover, a creditor should not file an involuntary petition against a husband and wife jointly.

Although the case can be converted to another chapter later in the proceeding, it is important to file under the appropriate chapter and under which the debtor would be legally able to file. Section 109 of the Bankruptcy Code states the eligibility requirements for filing under various chapters. The following is a brief summary of the eligibility requirements of chapters 7 and 11:

I. **Chapter 7:** A "person" (defined by section 101 of the Bankruptcy Code, to include an individual, partnership, and corporation, but not a governmental unit) may be a debtor under chapter 7 only if that person is not a (1) railroad or (2) domestic or foreign insurance company, bank, or credit union. 11 U.S.C. § 109. Stockbrokers and commodity brokers can file only under this chapter, which contains special provisions governing cases involving them.

II. **Chapter 11:** Only a person that may be a debtor under chapter 7 (except a stockbroker or a commodity broker) and a railroad may be a debtor under chapter 11.

Petitioners should check the box next to the chapter of the Code under which the petition is filed.

Information Regarding Debtor

Petitioners should check the applicable boxes in the following four categories:

Type of Debtor

A debtor can be an individual, a partnership, a publicly held corporation, or a non-publicly held corporation. If a debtor does not fit into any of these categories, a box entitled “other” is provided. In partnership cases, Bankruptcy Rule 1004 requires that all general partners consent to the filing of a “voluntary” bankruptcy petition; if they do not, the case must be filed as an “involuntary” bankruptcy, using Official Form 5.

Petitioner’s Belief Regarding Nature of Debt

A consumer debt is defined in section 101 of the Bankruptcy Code as a debt incurred by an individual primarily for a personal, family, or household purpose. If most of the debtor’s obligations meet these criteria, petitioners should check the box marked “[d]ebts are primarily consumer debts.” If the debtor is not an individual or if most of an individual’s debt arises from operation of a business, the petitioners should check the box marked “[d]ebts are primarily business debts.” Petitioners should complete Parts A and B for business debtors.

A. Type of Business

Petitioners should check the box that represents the type of business enterprise of the debtor. If none of the boxes accurately describe the type of business, the petitioners may check the box labeled “Other.”

B. Briefly Describe Nature of Business

Petitioners should describe the nature of a business debtor’s business in the space provided.

Venue

Petitioners should file an involuntary bankruptcy case in the federal judicial district in which the individual debtor has resided or maintained a domicile, or (in a business case) a principal place of business, or in which the debtor’s principal assets have been located for the 180 days before filing or for a longer part of those 180 days than in any other district. 28 U.S.C. § 1408. This provision applies also to a corporation or partnership. A corporation or partnership also can file in any district in which its “affiliate,” as defined by section 101 the Bankruptcy Code, general partner, or partnership has a bankruptcy case pending. Petitioners should check the appropriate box, to indicate that a proper venue was chosen for the case.

Pending Bankruptcy Case Filed By Or Against Any Partner Or Affiliate Of This Debtor

Pending cases are those that are open, i.e., not dismissed or closed. To the extent known to the petitioners, the following information should be listed regarding any and all pending bankruptcy cases filed by or against any partner or affiliate of this debtor. Petitioners should list the name of the debtor, case number, date the petition was filed against the partner or affiliate, relationship to the debtor, the district where the case is pending, and the judge that was assigned the case in the appropriate spaces. The name of the “district,” which is the judicial district in which the pending bankruptcy case was filed, should be placed in the space provided, for example, “District of Maryland.” Petitioners are asked to report the information for all pending bankruptcy cases and attach additional sheets, if necessary. The information about pending, related bank-

ruptcy cases signals the clerk to assign the case to the judge to whom any related case has been assigned.

Allegations

Petitioners should check the appropriate boxes in the following categories:

1. Petitioners should be sure that the requirements of 11 U.S.C. § 303(b) are met regarding the number of creditors, the type of claims, and the amount of claims. The requirements of section 303 are discussed above under “Applicable Law and Rules.”
2. The debtor must be a person, as defined in section 101 of the Bankruptcy Code, against whom an order for relief may be entered under the Bankruptcy Code. A “person” under section 101 of the Bankruptcy Code includes an individual, partnership, and corporation, but not a governmental unit.
- 3.a. The petitioner should be sure that the requirements of 11 U.S.C. § 303(h) are met. At least one of the two boxes (3.a. or b.) must be applicable. If the debtor is not paying such debtor’s debts as they become due, unless such debts are the subject of a bona fide dispute, petitioners should check box 3.a.
 - b. If within 120 days before the date of the filing of the petition, a custodian, other than a trustee, receiver, or agent authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession, petitioners should check box b.

Transfer Of Claim

Bankruptcy Rule 1003(a) governs the treatment of transferred claims held by petitioning creditors in an involuntary case. Petitioners should check the box if there has been a transfer of any claim against the debtor by or to any petitioner. All documents evidencing the transfer and any statements that are required under Bankruptcy Rule 1003(a) should be attached. Any entity that has transferred or acquired a claim for the purpose of commencing an involuntary case is not qualified to be a petitioner. *Id.* If the transfer was not made for the purpose of commencing an involuntary case, a signed statement to that effect must be attached to the petition, along with a statement disclosing the consideration given for the claim and the terms of the transfer. *Id.*

Request For Relief

This section states that the petitioner requests that an order for relief be entered against the debtor under the chapter of the Bankruptcy Code specified in the petition. This section requires a petitioner to represent, by signing the petition in the space provided, that the information provided in the petition is true and correct according to the best of each petitioner’s knowledge, information, and belief.

Signatures

It is very important that the petitioner(s) or representative(s) of the petitioner(s) sign the involuntary petition in all the appropriate places. Bankruptcy Rule 1008 requires all petitions to be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746. The unsworn declaration on page two of the petition conforms with section 1746, which permits the declaration to be made in the language provided with the same force and effect as a sworn statement. In other words, by signing the petition, the petitioner(s) is declaring, under penalty of perjury, that the information provided

in the petition is true and correct according to the best of each petitioner's knowledge, information, and belief.

If a petitioning creditor is a corporation or partnership, the individual authorized by the entity (corporation, partnership, etc.) to file the petition should sign the petition and include the individual's title, name of the petitioning creditor, and the date on the lines provided. The name and mailing address of the individual signing in a representative capacity should be placed on the lines provided. By signing the petition, the authorized individual is representing that the information provided in the petition is true and correct according to the best of the individual's knowledge, information, and belief, and that the individual has been authorized to file the petition on behalf of the named petitioner.

Signature of Attorney/Name and Address of Law Firm or Attorney

The attorney representing the petitioners must sign and date the petition and print the name, address, and telephone number of the attorney or law firm on the lines provided.

Petitioning Creditors

Petitioning creditors are asked to print their names and addresses in the spaces provided. The nature of each claim and the amount of each claim should also be included. The total amount of petitioners' claims should be placed in the box provided. If there are more than three petitioners, additional sheets with the declaration under penalty of perjury, petitioners' signatures, attorneys' signatures, names, addresses, and telephone numbers of attorneys, and petitioning creditors' information, using the same format as the official form, should be attached to the petition. Photocopies of Official Form 5 may be used for this purpose.

Filing Fee

Every case requires the payment of a filing fee. Filing fees for all chapters of the Bankruptcy Code are prescribed in section 1930 of title 28, United States Code (28 U.S.C. § 1930). As of January 1, 2000, a petitioner filing an involuntary case under chapter 7 must pay a filing fee of \$155, plus a \$30 administrative fee and a \$15 trustee surcharge, which is a total of \$200. A petitioner filing an involuntary case under chapter 11 must pay a filing fee of \$800 plus an administrative fee of \$30.

Advisory Committee Note

This form has been redesigned in a box format similar to that of Form 1. See Advisory Committee Note to Form 1.

The allegations required under § 303 are grouped together, and a separate section has been provided for additional allegations based upon the prohibitions and requirements set forth in Rule 1003(a) concerning transfer of claims by petitioning creditors. Petitioners may wish to supplement the allegations set forth in the form with a further statement of facts. Additional information concerning any allegation can be requested by the debtor as part of the discovery process.

Each petitioning creditor, by signing on the line provided, signs both the petition and the unsworn declaration which 28 U.S.C. § 1746 permits instead of verification. The addresses as well as the names of individuals signing the petition in a representative capacity are required, together with disclosure of which petitioner is represented by each signatory.

This form is intended to be used in every involuntary case, including that of a partnership. The separate form for a petition by a partner has been abrogated. Pursuant to § 303(b)(3)(A) of the Code, a petition by fewer than all of the general partners seeking an order for relief with respect to the partnership is treated as an involuntary petition. Such a petition is adversarial in character because not all of the partners are joining in the petition.

Section 303(b)(3)(B) permits a petition against the partnership if relief has been ordered under the Code with respect to all of the general partners. In that event, the petition may be filed by a general partner, a trustee of a general partner's estate, or a creditor of the partnership. This form may be adapted for use in that type of case.

28 U.S.C. § 1408(1) specifies the proper venue alternatives for all persons, including partnerships, as domicile, residence, principal place of business, or location of principal assets. Venue also may be based on a pending case commenced by an affiliate, general partner, or partnership pursuant to 28 U.S.C. § 1408(2). Both options are set forth in the block labeled "Venue."

28 U.S.C. § 1746 permits the unsworn declaration instead of a verification. See Committee Note to Form 2.

Advisory Committee Note to 1992 Amendment

The form has been amended to require the dating of signatures.

Form 6**SCHEDULES**

Official Form 6
(6/90)

Summary of Schedules

Schedule A	- Real Property
Schedule B	- Personal Property
Schedule C	- Property Claimed as Exempt
Schedule D	- Creditors Holding Secured Claims
Schedule E	- Creditors Holding Unsecured Priority Claims
Schedule F	- Creditors Holding Unsecured Nonpriority Claims
Schedule G	- Executory Contracts and Unexpired Leases
Schedule H	- Codebtors
Schedule I	- Current Income of Individual Debtor(s)
Schedule J	- Current Expenditures of Individual Debtor(s)

Unsworn Declaration under Penalty of Perjury

GENERAL INSTRUCTIONS: The first page of the debtor's schedules and the first page of any amendments thereto must contain a caption as in Form 16B. Subsequent pages should be identified with the debtor's name and case number. If the schedules are filed with the petition, the case number should be left blank.

Schedules D, E, and F have been designed for the listing of each claim only once. Even when a claim is secured only in part or entitled to priority only in part, it still should be listed only once. A claim which is secured in whole or in part should be listed on Schedule D only, and a claim which is entitled to priority in whole or in part should be listed on Schedule E only. Do not list the same claim twice. If a creditor has more than one claim, such as claims arising from separate transactions, each claim should be scheduled separately.

Review the specific instructions for each schedule before completing the schedule.

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 6

SCHEDULES

I. INTRODUCTION

Schedules A, B, D, E, and F comprise the schedule of assets and liabilities. Schedules I and J constitute a schedule of current income and current expenditures for individual and joint debtors. On the schedules the debtor must disclose all relevant information concerning the debtor's assets, liabilities, and financial activities. The remaining schedules are: 1) Schedule C for listing the property the debtor claims as exempt, 2) Schedule G for listing executory contracts and unexpired leases, and 3) Schedule H for listing codebtors. When completed by the debtor, these forms—combined with Official Form 7, Statement of Financial Affairs—should contain all the information that the debtor has about the debtor's property, debts, and financial transactions.

II. APPLICABLE LAW AND RULES

These schedules must be used to comply with section 521(1) of the Bankruptcy Code and Rule 1007(b) of the Federal Rules of Bankruptcy Procedure (referred to as "Bankruptcy Rule" or "Fed. R. Bankr. P.") A debtor should not underestimate the importance of accurately reporting the required information. The eligibility of an individual debtor for a discharge of a debt may depend upon the accurate completion of the schedules. Debts that are not listed in the schedule in time the creditor to file an answer (in the form of a proof of claim or an objection) may not be dischargeable unless the creditors have notice or actual knowledge of the case. 11 U.S.C. § 523(a)(3).

The schedules require a complete listing of assets and liabilities, and many details may be investigated by the trustee assigned to the case. Section 521(3) of the Code requires the debtor to cooperate with the trustee, who can administer the estate more effectively by requiring the debtor to provide relevant documents, rather than relying only on the description in the schedules. Accordingly, the trustee may request copies of any documents concerning the debtor's property necessary to the administration of the estate.

Time Limits

Debtors in chapter 7, 11, 12, and 13 cases are required to file their schedules at the time they file their voluntary petitions. Bankruptcy Rule 1007(c) provides for an automatic (no motion is needed) 15-day extension, but only if the petition is accompanied by a list of all the creditors and their addresses.

If the debtor is unable to complete the schedules within the 15 days, the debtor must file a motion requesting the court to grant an order authorizing additional time. Fed. R. Bankr. P. 1007(c).

In an involuntary case, the chapter 7 or chapter 11 debtor must file the schedules within 15 days after the order for relief is entered. Any extension of this time period must be requested by motion. Fed. R. Bankr. P. 1007(c).

III. GENERAL DIRECTIONS

1) Although the summary page, entitled "Summary of Schedules" appears first, this page should not be completed until the rest of the schedules have been completed.

2) On the Summary of Schedules page, debtors should place the name of the district where the case will be filed in the space provided, for example, Eastern District of California.

3) Debtors are asked to place the debtor's name and, if known, the case number at the top of every page of each schedule and continuation sheet.

4) Generally, a creditor's claim will be listed only once in these schedules, even if the claim is secured only in part, or is entitled only in part to priority under section 507(a) of the Code, with the remainder of the claim to be treated as a general unsecured claim. For example, a partially secured creditor whose claim is reported in Schedule D (Creditors Holding Secured Claims) will be listed together with the value of the property securing the claim and a notation of the amount of any unsecured portion of the claim. Information concerning the unsecured portion should not be repeated in Schedule F (Creditors Holding Nonpriority Unsecured Claims). Any resulting overstatement of the amount owed on secured and priority claims as reported on the summary is offset by a corresponding understatement of the amount owed on unsecured claims.

5) The debtor must not exclude any debts from the schedules, even those that the debtor intends to repay, such as loans from relatives or friends. The forms require the listing of all creditors, whether or not the debtor intends to repay those creditors after bankruptcy.

6) If a debtor has no property or no creditors in a particular category, an affirmative statement to that effect is required, such as "None." Married debtors should indicate whether property is jointly or separately owned and whether spouses are jointly or separately liable for debts, using the columns provided in the schedules.

7) A schedule can be amended at any time before the case is closed. Fed. R. Bankr. P. 1009. The clerk of court is required to collect a fee for filing an amendment to the schedules of creditors. Accordingly, it is in the debtor's best interest to use sufficient care to make the schedules as complete and accurate as possible.

8) The signed originals of the schedules and the required number of additional copies should be filed with the clerk of the bankruptcy court. The debtor should check first with the bankruptcy clerk's office to find out how many copies are required. Generally, a court will require more copies in a chapter 11 case than in a chapter 7 or chapter 13 case.

9) If the debtor acquires an interest in certain types of property within 180 days after the petition has been filed—an inheritance, for example—the debtor is required to file a supplemental schedule within 10 days after learning of the acquired interest in property. If the acquired property is exempt, the debtor must claim the exemption in the supplemental filing. 11 U.S.C. § 541(a)(5); Fed. R. Bankr. P. 1007(h).

10) In a chapter 7 or chapter 9 case, the requirement of filing a supplemental schedule continues even after the closing of the bankruptcy case. In a chapter 11, 12, or 13 case, a supplemental schedule need not be filed for property acquired after a chapter 11 plan has been confirmed or a chapter 12 or 13 discharge has been granted. Fed. R. Bankr. P. 1007(h).

11) Schedules and statements filed in a pending chapter 7 case are deemed filed in a converted case, unless the court directs otherwise. Fed. R. Bankr. P. 1007(c). For example, this circumstance may arise if a pending chapter 7 case is converted to a case under another chapter of the Bankruptcy Code.

WHAT FOLLOWS ARE INDIVIDUAL INSTRUCTIONS FOR EACH SCHEDULE. THEY ARE DESIGNED TO SUPPLEMENT THE DIRECTIONS PRINTED ON THE FORMS THEMSELVES.

Official Form 6 - Cont.
4-2010

United States Bankruptcy Court

District of _____
In re _____ Case No. _____
Debtor(s) _____

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts from Schedules D, E, and F to determine the total amount of the debtor's liabilities.

AMOUNTS SCHEDULED					
NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A—Real Property			\$		
B—Personal Property			\$		
C—Property Claimed As Exempt					
D—Creditor Holding Secured Claims				\$	
E—Creditors Holding Unsecured Priority Claims				\$	
F—Creditors Holding Unsecured Nonpriority Claims				\$	
G—Executory Contracts and Unexpired Leases					
H—Codebtors					
I—Current Income of Individual Debtor(s)					\$
J—Current Expenditures of of Individual Debtor(s)					\$
Total Number of sheets in ALL Schedules ▶					
			Total Assets ▶ \$		
			Total Liabilities ▶ \$		

INSTRUCTIONS FOR COMPLETING SUMMARY OF SCHEDULES

Although the summary page, entitled "Summary of Schedules" appears first, this page should not be completed until the rest of the schedules have been completed. Upon completion of each schedule, debtors should place, in the spaces provided, the totals of the (1) number of sheets of each schedule, and, where applicable, the totals of (2) assets, (3) liabilities, (4) current income of individual debtors, and (5) current expenditures of individual debtors.

After completing the Summary of Schedules, debtors should complete the Declaration Concerning Debtor's Schedules,

FORM B6A
(6/90)

Debtor: _____ Case No. _____
Creditor: _____ (if known)

SCHEDULE A—REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G—Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C—Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	H U S B A N D J O I N T W I F E C O M M U N I T Y	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM

Total ▶ \$

(Report also on Summary of Schedules.)

INSTRUCTIONS FOR COMPLETING SCHEDULE A—REAL PROPERTY

1) In the legal world, there are two kinds of property, “real property,” which is real estate, and “personal property,” which is everything else; such as cash, car, clothes, books, furniture, dishes, stocks, bonds, pets, etc. This Schedule A is only concerned with real property. Personal property is covered by Schedule B.

2) Ordinarily, a street address should be listed in the column entitled “Description and Location of Property,” unless there is no street address or, if, for any reason, a street address would not accurately state the property’s location. If the debtor holds no interest in real property, the debtor should write “None” in this column, place \$0 in the space marked “Total”, report the total \$0 on the Summary of Schedules, and proceed directly to Schedule B.

3) In the column entitled “Nature of Debtor’s Interest in Property,” the debtor should describe the interest such as “owner,” “holder of life estate,” etc. An interest in property can be legal (such as when the debtor holds title, either alone or with another), equitable (such as when the debtor is the purchaser under a land contract), or future (such as when the debtor is the holder of a remainder interest subject to a life estate granted to another). If the interest is a leasehold, see Instruction 8, below.

4) Married debtors should indicate whether the property is jointly owned or separately owned, using the column marked “Husband, Wife, Joint, or Community.” Married debtors are asked to place an “H,” “W,” “J,” or “C” in this column.

5) In the column entitled “Current Market Value . . . ,” the debtor should list the market value of the debtor’s interest in the property without deducting the amount of any secured claim that may exist. In simple terms, this usually means the full market value should be listed.

If there is real property owned by a partnership in which the debtor is a partner, or owned simply with another individual who is not the debtor’s spouse and without survivorship rights, it may be appropriate to list a value that represents only the debtor’s proportional interest. Any listing of less than the full value of any property must be fully explained. If the debtor holds a life estate, its value must be stated. (This may be difficult to determine, and legal or other expert assistance may be needed). The debtor is asked to place the total dollar amount in the space provided.

6) Debtors should make sure that any market value listed in this schedule is consistent with the market value stated on Schedule C (Property Claimed as Exempt) and Schedule D (Creditors Holding Secured Claims).

7) In the column labeled “Amount of Secured Claim,” debtors should list any entity that the debtor believes has a lien or holds a secured interest in any of the listed real property and state the amount of the secured claim. If no entity holds a secured interest in the real property, debtors should write “None” in the column.

8) Executory contracts and unexpired leases should not be included in this form; Schedule G is specifically designed for them. If the debtor is unsure which category fits the property and the debtor’s interest in it, the debtor should list the property in both places. Schedule G contains definitions of both “executory contract,” and “unexpired lease.” These terms can be subject to varying interpretations, however, and a debtor holding such assets should seek expert counsel before filing a bankruptcy case.

9) Individual debtors and joint debtors should list the amount of any exemptions they claim with respect to real property on Schedule C.

10) Debtors should place the total dollar amount of the current market value of all real property in the space provided on Schedule A and report the total dollar amount on the Summary of Schedules.

FORM B&B
(10/89)

In re _____ Case No. _____
Debtor (If known)

SCHEDULE B—PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C—Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G—Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property."

TYPE OF PROPERTY	DESCRIPTION AND LOCATION OF PROPERTY	H U S B A N D		C O M M U N I T Y	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
		N	O		
1. Cash on hand.					
2. Checking, savings or other financial ac- counts, certificates of deposit, or shares in banks, savings and loan, thrift, build- ing and loan, and homestead associa- tions, or credit unions, brokerage hous- es, or cooperatives.					
3. Security deposits with public utilities, telephone companies, landlords, and others.					
4. Household goods and furnishings, in- cluding audio, video, and computer equipment.					
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.					
6. Wearing apparel.					
7. Furs and jewelry.					
8. Firearms and sports, photographic, and other hobby equipment.					
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.					
10. Annuities. Itemize and name each is- suer.					

FORM B6B-- Cont.
(10/89)

In re _____ Case No. _____
Debtor (If known)

SCHEDULE B—PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	DESCRIPTION AND LOCATION OF PROPERTY	H U S B A N D	C O M M U N I T Y	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
11. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize.				
12. Stock and interests in incorporated and unincorporated businesses. Itemize.				
13. Interests in partnerships or joint ven- tures. Itemize.				
14. Government and corporate bonds and other negotiable and nonnegotiable in- struments.				
15. Accounts receivable.				
16. Alimony, maintenance, support, and property settlements to which the deb- tor is or may be entitled. Give particu- lars.				
17. Other liquidated debts owing debtor in- cluding tax refunds. Give particulars.				
18. Equitable or future interests, life es- tates and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Proper- ty.				
19. Contingent and non-contingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.				
20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give esti- mated value of each.				
21. Patents, copyrights, and other intellec- tual property. Give particulars.				
22. Licenses, franchises, and other general intangibles. Give particulars.				

FORM B6B -Cont.
(10/89)

Debtor (If known)

SCHEDULE B—PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	DESCRIPTION AND LOCATION OF PROPERTY	UNITED STATES DEPARTMENT OF TREASURY	INTERNAL REVENUE SERVICE	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
23. Automobiles, trucks, trailers, and other vehicles. 24. Boats, motors, and accessories. 25. Aircraft and accessories. 26. Office equipment, furnishings, and supplies. 27. Machinery, fixtures, equipment and supplies used in business. 28. Inventory. 29. Animals. 30. Crops—growing or harvested. Give particulars. 31. Farming equipment and implements 32. Farm supplies, chemicals, and feed. 33. Other personal property of any kind not already listed. Itemize.				

— continuation sheets attached Total 3
(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

**INSTRUCTIONS FOR COMPLETING SCHEDULE
B—PERSONAL PROPERTY**

1) Schedule B is used for reporting all the debtor's interests in personal property except executory contracts and unexpired leases. Anything the debtor owns that is not real property is considered personal property. Thus, all property in the debtor's estate that is not real property should be listed on the form.

2) A general description of the column labeled "Type of Property" is set forth below:

1. Cash on hand is limited to the amount the debtor has in his or her possession at the date the petition is filed.
2. The category "Checking, savings or other . . ." includes **all** financial accounts owned by the debtor.
3. The category "Security deposits with public utilities . . ." includes all credit accounts made with a landlord, utility (electric, gas, water, etc.), or telephone company, to secure ongoing occupancy or usage.
- 4-8. These categories require a brief description of the types of items held, rather than an itemized description of each piece of property. Courts differ in the amount and degree of detail they require concerning these items. At a minimum, a debtor should list each major appliance separately and describe furniture, bedding, clothing, and similar possessions. Anything of unusual value should be mentioned separately. The market value of each item should be totaled, and one lump sum reported for each category, unless one item is of particular value or unique in some other way.
- 9,10,12,13. Since these categories often include the rights and interests of third parties, the debtor is asked to use particular detail in describing the various interests, itemizing each particular piece of property. An "annuity" is a yearly payment of money, either for life or for a number of years.
11. ERISA-qualified pension plans are excluded from the bankruptcy estate. *Patterson v. Shumate*, 112 S.Ct. 2242 (1992). Accordingly, a debtor's interest in such a plan should be reported with a statement that it is not part of the estate. To avoid misleading creditors or the trustee, no dollar value should be reported. However, it is the debtor's responsibility to ascertain whether the debtor's personal pension plan is ERISA-qualified.
14. Examples of negotiable instruments include promissory notes, cashiers' checks, personal checks, and money orders. Non-negotiable instruments are those which can not be transferred simply by endorsement and/or delivery.
- 15-17. These are debts owed to the debtor. Items 15 and 16 ask the debtor to be specific. Item 17 request the debtor to list all monies owed to the debtor that are not included in Items 15 and 16 and, specifically, any expected tax refunds.
- 18-20. These categories include interests in personal property that may or will come into the possession of the debtor in the future.
- 21-22. Intellectual property may include such items as trademarks and trade secrets. Proceeds from royalties and licensing agreements should also be included on this form. The debtor is asked to be specific.

- 23-25. The debtor should list these items specifically, giving the maker, model, and year of car(s), other vehicles and accessories, and stating product names when possible.
- 26-28. If the debtor is a business, some of these categories, such as office equipment or fixtures, may be too numerous to describe fully. If this is the case, a more general description will suffice and can be supplemented with an attached inventory.
- 29-32. These categories include animals, crops, farming equipment, farming implements, and farm supplies. Items of particular value or unique in some other way should be listed separately,
33. Any other personal property not listed above should be listed in this category.

3) The debtor must declare on the schedule whether the debtor has any property in each category listed in the column labeled "Type of Property." If the debtor has no property in one or more of the categories, the debtor should place an "X" in the column marked "None." If the appropriate category is not listed, item 33 allows the debtor to list any miscellaneous items.

4) "Itemize" means to state each item or article separately. The debtor is only required to itemize when the schedule specifies to do so, or if a particular item is unique in some way.

5) If property of the debtor is being held by someone other than the debtor, that person's name and address should be included in the column entitled "Description and Location ..."

6) The "current market value" describes the market value on the date the petition was filed. Value is not the same as the purchase price; rather it usually is a fraction of that. "Market value," is a term that is subject to interpretation and may vary with the nature of the market for particular items. The market for used clothing and household furnishings is very different from the market for blue chip stocks. For cars, the National Automobile Dealers Association (NADA) publishes current market values. The NADA book is available at public libraries and on the Internet. The values stated should be appropriate for the property described.

7) Debtors should make sure that the market values of the items of property listed in this schedule are consistent with those stated in Schedules C and D. While certain categories, such as cash, are easy to value, the correct market value of other categories may be more difficult to pinpoint. When the debtor cannot find the market value, the debtor should state the approximate amount, based on the market for the property, and include with the schedule a statement of the method of valuation used.

8) The debtor is not asked to list exemptions or secured claims in this form. Exemptions should be listed in Schedule C and secured claims in Schedule D.

9) Executory contracts and unexpired leases should be included in Schedule G, rather than on this form. However, if the debtor is not sure which category is correct for a particular item, the debtor should list the property in both forms.

10) Debtors should complete and attach continuation sheets if more space is needed.

11) Debtors are directed to place the total dollar amount of the current market value in the space provided, including the amounts from any continuation sheets.

12) Debtors should report the total dollar amount on the Summary of Schedules.

FORM B6C
(6/90)

In re _____ Case No. _____
Debtor (If known)

SCHEDULE C—PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemption to which debtor is entitled under

(Check one box)

- ☐ 11 U.S.C. § 522(b)(1) Exemptions provided in 11 U.S.C. § 522(d). **Note: These exemptions are available only in certain states.**
- ☐ 11 U.S.C. § 522(b)(2) Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTIONS

INSTRUCTIONS FOR COMPLETING SCHEDULE C

PROPERTY CLAIMED AS EXEMPT

1) Individual debtors and joint debtors (individual debtors and their spouses) are entitled to claim certain property as exempt by law from the bankruptcy estate. Section 522(b) of the Bankruptcy Code gives a debtor the choice of claiming the so-called "federal bankruptcy" exemptions listed in section 522(d) or the exemptions provided under the law of the state in which the debtor resides. Section 522(b)(1), however, also authorizes any state to limit its citizens to the exemptions provided by the state. Residents of these "opt out" states may not claim the federal exemptions set forth in section 522(d), but only those authorized under state law and the various "non-bankruptcy" exemptions described below. Anyone planning to file a bankruptcy case must determine which exemptions are available, because claiming exemptions to which one is not entitled may result in the loss of the property and failing to claim an exemption to which a debtor is entitled can result in unnecessary loss of property.

The second category of exemptions are the state and other "non-bankruptcy" exemptions to which section 522(b)(2) refers. These exemptions may be contained in federal, state, or local laws. "Non-bankruptcy" simply means not contained in the Bankruptcy Code. Even in an "opt-out" state, it is important to check federal, state, and local laws, to see what exemptions are available.

Individual debtors and joint debtors should choose either the "federal bankruptcy" exemptions under section 522(b)(1), or the state and other nonbankruptcy exemptions provided for under section 522(b)(2), and place an "X" in the appropriate box at the top of the schedule. Individual debtors and joint debtors may not elect to split their exemptions between these two sections.

2) Exemptions are not available to a corporation, partnership, or any entity that is not an individual or an individual and his or her spouse. In these cases the debtor should include this form along with the rest of the schedules, with a notation of "Not Applicable."

3) The description of property on this form, as well as the market value, should correspond generally with the description on Schedule A or Schedule B. Many exemptions are limited to certain amounts of dollar value. It is important to know these limits when preparing the schedule. There also is a substantial body of case law on the subject of exemptions, which in any particular state or district may restrict or liberalize certain exemptions. A debtor should investigate the law governing exempt property in the state of residence and seek advice from a lawyer if valuable property is at stake. The location of property should not be included in this form.

4) As stated above, the debtor must choose the exemption law under which exemptions are claimed and state the choice at the top of the schedule. The debtor may choose either (1) section 522(d) of the Bankruptcy Code or (2) a state statute, local statute, or a constitutional provision. If choosing the Bankruptcy Code, the debtor should state for each item or category of items the exact section of the Code where the exemption exists, for example, 11 U.S.C. § 522(d)(4). Specify the provision of the Code or the law providing each exemption in the space provided.

5) The value of the claimed exemption is not always the same as the current market value of the property. The debtor should check the appropriate subsection of section 522 of the Bankruptcy Code, state law, or other applicable non-bankruptcy law for financial limitations on exemptions. Debtors are asked to state the dollar value of the claimed exemption in the space provided.

6) Debtors are instructed to state the current market value of the property in the space marked for that purpose. Debtors should not subtract the value of the claimed exemption.

FORM B6D
(6/90)Name _____
Debtor (If known)

Case No. _____

SCHEDULE D—CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and account number, if any, of all entities holding claims secured by property of the debtor as of the date of filing of the petition. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests. List creditors in alphabetical order to the extent practicable. If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H—Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	C O D E B T O R	A N D I N F O R M A T I O N	J O I N T L Y O W N E D	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	C O N T I N G E N T	L I E N T I T L E	D I S P O S I T I O N	AMOUNT OF CLAIM WITHOUT DEDUCTING UNSECURED PORTION	UNSECURED PORTION
ACCOUNT NO.									
				Value \$					
ACCOUNT NO.									
				Value \$					
ACCOUNT NO.									
				Value \$					
ACCOUNT NO.									
				Value \$					

Continuation sheets attached

Subtotal ▶ \$
(Total of this page)
Total ▶ \$
(Use only on last page)
(Report total also on Summary of Schedules)

FORM B6D—Cont.
(6/90)

In re _____ Case No. _____
Debtor (if known)

SCHEDULE D—CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	C O D E	H - S B A N D E T O R	J O I N T E N E R Y	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	C O N T I N G E N T	U N L I Q U I T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.									
				VALUE \$					
ACCOUNT NO.									
				VALUE \$					
ACCOUNT NO.									
				VALUE \$					
ACCOUNT NO.									
				VALUE \$					
ACCOUNT NO.									
				VALUE \$					

Sheet ____ of ____ continuation
sheets attached to Schedule of Cred-
itors Holding Secured Claims

Subtotal ▶ \$ _____
(Total of this page)

Total ▶ \$ _____
(Use only on last page)

(Report total also on Summary of Schedules)

INSTRUCTIONS FOR COMPLETING SCHEDULE D

CREDITORS HOLDING SECURED CLAIMS

1) The purpose of this schedule is to identify those creditors holding secured claims against property of the estate and the amount owed to them. Only creditors holding secured claims as of the date of the filing of the petition should be listed. The creditors listed will have the opportunity to file a Proof of Claim (Official Form 10), which will have the legal effect of superseding any conflicting information on this schedule. The claims listed on Schedule D should include all claims secured by any type of interest in either personal property or real property, including judgment and statutory liens, garnishments, mortgages, deeds of trust, and other security interests. Although the debtor should provide the most accurate information possible, the amounts of the claims sometimes cannot be stated with exact precision. It is crucial, however, that the names and addresses of all creditors be identified to enable the trustee and creditors to get a reasonably accurate account of the holders of secured claims.

Debtors are directed to place the creditor's name, mailing address, zip code, and account number in the spaces provided, and to use continuation sheets, if necessary. If the debtor has no creditors holding secured claims, the debtor should check the box provided on Schedule D and go on to the next schedule.

2) Secured Claim—A claim is secured if the creditor has a lien on specific property of the debtor (collateral) that gives the creditor the right to seize that particular property if the debtor defaults in making payments to the creditor. A claim is secured only to the extent to which the value of the creditor's interest in the property equals the amount of the debt. Any amount not protected by collateral is unsecured. 11 U.S.C. § 506. Examples of liens are a mortgage on real estate and a security interest in a car, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien.

The existence of a third-person guarantor of a creditor's claim does not make that claim secured.

3) A debtor should list on this form all claims that are either partially or fully secured claims. A secured claim is any claim for which the creditor holds a security interest in the debtor's property, regardless of how small.

4) The debtor is directed to place an "X" in the column labeled "Codebtor" if an entity other than a spouse may be jointly liable on a claim. Debtors filing a joint petition should designate whether the husband, wife, both of them, or the marital community may be liable on each claim, by placing a "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

5) Debtors are directed to state the date the claim was incurred, nature of the lien, description, and market value of the property subject to the lien in the space provided. Debtors should state the market value in dollars.

6) If the claim is contingent, unliquidated, or disputed, debtors should place an "X" in one or more of the appropriate columns. Otherwise, leave these columns blank. A general definition of the terms "contingent, unliquidated, or disputed" is provided below.

Definitions:

Contingent Claim—A claim is contingent if the debtor's liability depends on the occurrence of a certain event, such as where the debtor is a cosigner on another person's loan, and that person fails to pay.

Unliquidated Claim—An unliquidated claim is a claim the amount of which is not completely certain. The claim exists, but the amount is presently unknown. For example, a debtor may have been at fault in a car accident, but there is no judgment yet establishing the amount of the debtor's liability. The debtor will have to estimate the amount of such a claim and designate it as unliquidated.

Disputed Claim—A claim is disputed when the debtor and creditor do not agree on the debtor's liability or on the amount of the debt.

These three columns are particularly important for the chapter 11 creditor in determining whether to file a proof of claim. 11 U.S.C. § 1111(a).

7) The column entitled "Amount of Claim Without Deducting . . ." asks the debtor to disclose, to the best of his or her knowledge, the total amount of the claim, unsecured and secured.

8) In the column entitled "Unsecured Portion . . ." the debtor should subtract the value of the collateral from the total amount of the claim, so that the secured and unsecured portions are highlighted and the same creditor need *not* be listed again, in Schedule F, for the unsecured part of the same claim.

9) Debtors should place the subtotal for the claims listed on each page—without deducting the value of the collateral—in the space provided at the bottom of each continuation sheet. Debtors should place the total of all secured claims on the last page only and report the total on the Summary of Schedules in the column marked "Liabilities."

Form 601 (Rev. 198)

In re	Case No.
Debtor	

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name and mailing address, including zip code, and account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Repeat this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

- ☐ **Extensions of credit in an involuntary case:** Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(2)
- ☐ **Wages, salaries, and commissions:** Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$4,300* per person, earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(3)
- ☐ **Contributions to employee benefit plans:** Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4)
- ☐ **Certain farmers and fishermen:** Claims of certain farmers and fishermen, up to \$4,300* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(5)
- ☐ **Deposits by individuals:** Claims of individuals up to \$1,950* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(6)
- ☐ **Alimony, Maintenance, or Support:** Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 11 U.S.C. § 507(a)(7)
- ☐ **Taxes and certain other debts owed to governmental units:** Taxes, customs duties, and penalties owing to federal, state, and local government units as set forth in 11 U.S.C. § 507(a)(8)
- ☐ **Commitments to maintain the capital of an insured depository institution:** Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9)

* Amounts are subject to adjustment on April 1, 1998, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

_____ continuation sheets attached

Form B6E - Cont
(10/89)

In re _____, Case No. _____
Debtor (If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS
(Continuation Sheet)

TYPE OF PRIORITY

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT DEBTOR, COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	TYPE OF PRIORITY			AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
				CONTINGENT	UNLIQUIDATED	DISPUTED		
ACCOUNT NO								
ACCOUNT NO								
ACCOUNT NO								
ACCOUNT NO								
ACCOUNT NO								

Sheet no. ____ of ____ sheets attached to Schedule of Creditors Holding Priority Claims

Subtotal > \$ _____
(Total of this page)
Total > \$ _____
(Use only on last page of the completed Schedule E.)
(Report total also on Summary of Schedules)

**INSTRUCTIONS FOR COMPLETING SCHEDULE E
CREDITORS HOLDING UNSECURED PRIORITY CLAIMS**

I. INTRODUCTION

This schedule lists the types of unsecured claims that are entitled to priority. It requests the debtor to indicate the existence of claims in each category. Unsecured debts are those for which the creditor does not have a lien or other collateral.

Those claims that are considered "priority" are specified in section 507 of the Bankruptcy Code. They are given an order of importance, and they enjoy priority in payment over other unsecured claims. Frequently, unsecured priority claims are subject to monetary restrictions that must be taken into account in this form. For example, under section 507(a)(4) of the Bankruptcy Code, contributions to employee benefit plans enjoy priority status, but only to the extent of the number of employees covered by each plan multiplied in 1999 by \$4,300. (These amounts were adjusted on April 1, 1998, to reflect changes in the Consumer Price Index (CPI) and will be readjusted every three years thereafter). A debtor must be careful to take into account any restrictions imposed on unsecured priority claims when filling out this form. This schedule asks for both the total amount of the claim and the amount of that claim that is entitled to priority under section 507 of the Bankruptcy Code.

II. APPLICABLE LAW AND RULES

Types of Priority Claims:

1) Not included in this form but first on the priorities list are administrative expenses, fees, and charges incurred by the estate during the bankruptcy case. 11 U.S.C. § 507(a)(1). Those who are entitled to payment under this section are not deemed "creditors" in the bankruptcy case. The bulk of administrative expense claims arise after the case is filed. Accordingly, the amounts incurred, and often the identity of many who eventually become claimants, are unknown at the time the schedules are filed.

2) The second priority is afforded to claims under 11 U.S.C. § 507(a)(2) of the Bankruptcy Code to the group frequently known as "involuntary gap" creditors. Involuntary gap creditors are those whose claims arise in an involuntary case during the "gap" between the commencement of the case and the earlier of the appointment of a trustee or the order for relief. These claims are allowable under section 502(f) of the Bankruptcy Code.

3) Section 507(a)(3) gives third priority to unpaid wages, salaries, and commissions earned by employees of the debtor within 90 days before the earlier of the date of the filing of the petition or the date the debtor ceased doing business. The maximum amount that any employee could claim under this priority in 1999 is \$4,300, an amount that was adjusted in 1998 to reflect changes in the CPI and will be readjusted every three years thereafter. The remainder of the claim is a general, unsecured claim.

4) Under section 507(a)(4) of the Bankruptcy Code, the priority for contributions to employee benefit plans has the same monetary restrictions as wages, salaries, and commissions, limiting the portion of the claim entitled to priority to \$4,300 per employee in 1999, less any amount entitled to priority under § 407(a)(3). The contributions are those that were payable for services rendered within 180 days before the filing of the petition or the date the debtor ceased doing business, whichever occurs first.

5) Section 507(a)(5) of the Bankruptcy Code provides priority for a farmer in the business of raising or producing grain against a debtor who operates grain storage

facilities, as well as for a United States fisherman against a debtor who operates a fish storage or processing facility. Both types of claims must arise from the sale, conversion, or consignment of these commodities to the debtor, and the priority does not exceed \$4,300 per farmer or fisherman.

6) Section 507(a)(6) of the Bankruptcy Code gives priority status to a claim by an individual who made a deposit with the debtor, before the bankruptcy case was filed, for the purchase of either property or services, and "lost the deposit," never having received the property or services in return for payment. Examples are deposits for furniture that was ordered but never delivered and prepaid "memberships" in gyms or health clubs. The deposit is money owed for goods or services that have not been rendered. The maximum amount entitled to priority for such a claim is \$1,950 per individual.

7) Section 507(a)(7) of the Bankruptcy Code gives priority status to claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in this section. Some restrictions apply to this priority, and debtors should read section 507(a)(7) carefully before completing this form.

8) Sections 507(a)(8) and 507(a)(9) of the Bankruptcy Code give priority status to claims for unpaid taxes and debts owed to federal, state, or local governments, and claims against certain defined debtors for commitments to the federal bank insurance companies, such as the FDIC. Taxes that are collateralized by a lien on property should not be included in this form. Tax liens should be reported on Schedule D. Sections 507(a)(8) and 507(a)(9) provide a long list of restrictions on the priority of taxes which a debtor should read carefully.

III. DIRECTIONS

If no unsecured priority claims exist, a debtor should place an "X" in the box located just above the line entitled "Types of Priority Claims." The debtor should check the box next to as many types of priority claims as exist against the debtor. Debtors should be sure to complete at least one separate continuation sheet for each type of priority claim that exists against the debtor. Debtors are asked to place the type of priority on the line provided at the top of the form. It is helpful if the creditors on each schedule are listed alphabetically. Debtors should be sure to include the creditor's name, mailing address, zip code, and the account number in the spaces provided.

Debtors are asked to place an "X" in the column labeled "Codebtor" if an entity, other than a spouse, may be jointly liable on a claim. Debtors filing a joint petition should designate whether the husband, wife, both of them, or the marital community may be liable on each claim, by placing a "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

Debtors are instructed to state the date the claim was incurred and the consideration for the claim in the space provided. In other words, the debtor should state what the debtor received in exchange for the claim such as, "goods purchased," or "hours worked," or "cash deposited."

If the claim is contingent, unliquidated, or disputed, the debtor should place an "X" in one or more of the appropriate columns. Otherwise, leave these columns blank. A general definition of the terms "contingent, unliquidated, or disputed" is provided below.

Definitions:

Contingent Claim—A claim is contingent if the debtor's liability depends on the occurrence of a certain event, such as where the debtor is a cosigner on another person's loan, and that person fails to pay.

Unliquidated Claim—An unliquidated claim is a claim the amount of which is not completely certain. The claim exists, but the amount is presently unknown. For example, a debtor may have been at fault in a car accident, but there is no judgment yet establishing the amount of the debtor's liability. The debtor will have to estimate the amount of such a claim and designate it as unliquidated.

Disputed Claim—A claim is disputed when the debtor and creditor do not agree on the debtor's liability or on the amount of the debt.

These three columns are particularly important for the chapter 11 creditor in determining whether to file a proof of claim. 11 U.S.C. § 1111(a).

Debtors are directed to place the amount of the claim in the space provided and place the subtotal at the bottom of each page. The total should appear only on the last continuation sheet. Debtors should report the total on the Summary of Schedules in the column labeled "Liabilities."

Debtors should place the amount entitled to priority in the last column. It is important to remember that many categories are restricted to certain dollar limits and, thus, the amount entitled to priority might not be the same as the total amount of the claim.

Form B6F (9/97)

In re _____ Debtor _____

Case No. _____ (If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and account number, if any, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community maybe liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
			continuation sheets attached	Subtotal	\$		
				Total	\$		

(Report also on Summary of Schedules)

Form 606 - Cont
(10/89)

In re _____
Debtor

Case No. _____
(If known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CREDITOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONJUGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL
ACCOUNT NO						
ACCOUNT NO						
ACCOUNT NO						
ACCOUNT NO						
ACCOUNT NO						
Sheet no. ____ of ____ sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims			Subtotal >			\$
			(Total of this page)			
			Total >			\$

(Use only on last page of the completed Schedule F.)
(Report total also on Summary of Schedules)

INSTRUCTIONS FOR COMPLETING SCHEDULE F
CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

1) Schedule F requires the debtor to list creditors holding unsecured nonpriority claims, as of the date of the filing of the petition. Unsecured debts are those for which there is no lien on the debtor's property. If the debtor has no creditors holding unsecured nonpriority claims to report on this schedule, the debtor should check the box provided at the top of this form and proceed to the next schedule.

2) Unsecured nonpriority claims include all claims a creditor may have that are neither secured nor entitled to priority status under section 507 of the Bankruptcy Code. Generally, this schedule is used for the majority of the debts a debtor seeks to have discharged,

3) It is crucial for the debtor to list all remaining creditors on this form, because the debtor may be unable to receive a discharge of debt if the creditor was not properly scheduled and had no notice of the bankruptcy. 11 U.S.C. § 523(a). Claims listed on Schedules D and E should not be listed again on this form.

4) Although not required by law, it is strongly urged that the debtor place the creditors on this form in alphabetical order. Continuation sheets should be used if more space is needed.

5) The most important aspect of this form is the listing of the creditors and their complete addresses, including zip codes. Debtors should include their account numbers with each creditor, such as credit card account, department store account, etc., if applicable. If multiple addresses exist, the debtor should repeat the creditor's name and list each address in the spaces provided. Debtors should not repeat the description and amount of the debt, but note that the debt is the "same as above" or similar appropriate statement. (Multiple addresses should be included in the mailing list or mailing matrix, using a separate entry and repeating the creditor's name for each address.)

6) Debtors are instructed to place an "X" in the column labeled "Codebtor" if an entity other than a spouse may be jointly liable on a claim. Debtors filing a joint petition should designate whether the husband, wife, both of them, or the marital community may be liable on each claim, by placing a "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

7) Debtors are directed to state the date the claim was incurred and the consideration for the claim in the space provided. In other words, debtors should state what the debtor received in exchange for the claim such as, "goods purchased" or "extension of credit," or "medical treatment."

8) If a claim is subject to setoff, the debtor is required to state that fact on the form. A "setoff" is when part of the debt owed by the debtor to the creditor is "canceled out" by a pre-existing debt owed by the creditor to the debtor. Since certain pre-petition setoffs taken by a creditor may be subject to recovery by the bankruptcy estate, it is important that all setoffs be accounted for on this form.

9) If the claim is contingent, unliquidated, or disputed, the debtor should place an "X" in one or more of the appropriate columns. Otherwise, leave these columns blank. General definitions of the terms "contingent," "unliquidated," and "disputed" are provided below.

Definitions:

Contingent Claim—A claim is contingent if the debtor's liability depends on the occurrence of a certain event, such as where the debtor is a cosigner on another person's loan, and that person fails to pay.

Unliquidated Claim—An unliquidated claim is a claim the amount of which is not completely certain. The claim exists, but the amount is presently unknown. For example, a debtor may have been at fault in a car accident, but there is no judgment yet establishing the amount of the debtor's liability. The debtor will have to estimate the amount of such a claim and designate it as unliquidated.

Disputed Claim—A claim is disputed when the debtor and creditor do not agree on the debtor's liability or on the amount of the debt.

These three columns are particularly important a creditor in a chapter 11 case in determining whether to file a proof of claim. 11 U.S.C. § 1111(a).

10) The stated amount of each claim need not be exact, but it should be as precise as possible. If the only figure attainable is an approximation, this should be noted on the form, such as by adding "approx." after the amount.

11) Debtors whose debts have been sent to collection agencies or attorneys for collection may wish to add an appendix to this schedule listing the names and addresses of these entities or individuals, to ensure that they receive notice of the bankruptcy and refrain from attempting to collect debts. 11 U.S.C. § 362(a). (Any collection agency and every attorney collecting a debt on behalf of a creditor should also be listed in the mailing list or mailing matrix.)

12) Debtors should place a subtotal at the bottom of each continuation sheet and the total on the last continuation sheet. Debtors should report the total of all claims listed on this schedule in the Summary of Schedules in the column labeled "Liabilities."

FORM B6G
(10/89)

In re _____ Case No. _____
Debtor (If known)

SCHEDULE G—EXECUTORY CONTRACTS
AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described.

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

☐ Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST, STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT

INSTRUCTIONS FOR COMPLETING SCHEDULE G
EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Federal Rule of Bankruptcy Procedure 1007(b) requires the debtor to file a schedule of executory contracts and unexpired leases, unless the court orders otherwise. The Code does not define the term "executory contract." Generally, executory contracts are those contracts in which, to some extent, the obligations of both parties are unperformed, so that the failure of one party to complete performance would constitute a material breach excusing the performance of the other party. *In re Texscan Corp.*, 976 F.2d 1269 (9th Cir. 1992). A body of case law has developed further defining "executory contracts" and determining whether particular types of contracts constitute executory contracts. Common types of executory contracts include orders for furniture and layaway arrangements at clothing stores.

Debtors that have no executory contracts or unexpired leases should check the box provided on the form and proceed to the next schedule.

The information on this schedule should not be repeated in the schedules of assets; however, parties listed on this schedule will not receive notice of the filing of the bankruptcy case, unless the party is also listed in the appropriate schedule of creditors. It is important to list the name, mailing address, and zip code of other parties to an executory contract or unexpired lease on this schedule and also on other appropriate schedules, if any party is a creditor or contingent creditor in the bankruptcy case.

All unexpired leases of either real or personal property are to be reported on this schedule, including any timeshare interests. The schedule requires the debtor to disclose specific information to assist the trustee in identifying leases which must be assumed within 60 days after the order for relief or be deemed rejected under section 365(d) of the Bankruptcy Code. Thus, it is important to state the description of the lease and the nature of the debtor's interest in the lease, such as "lessor" or "lessee."

FORM B6H
(6/90)In re _____
DebtorCase No. _____
(If known)

SCHEDULE H—CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. In community property states, a married debtor not filing a joint case should report the name and address of the nondebtor spouse on this schedule. Include all names used by the nondebtor spouse during the six years immediately preceding the commencement of this case.

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR

**INSTRUCTIONS FOR COMPLETING SCHEDULE
H—SCHEDULE OF CODEBTORS**

This schedule is designed to provide the trustee and creditors with information about codebtors of all types other than spouses in joint cases. Generally, a codebtor is any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by the debtor in the schedules of creditors. The completed schedule provides information concerning nondebtor parties, such as guarantors, cosigners, and nondebtor spouses who are liable on a consumer loan, a mortgage, or other debt. In chapter 12 and chapter 13 cases, the completed schedule also indicates those persons who may be entitled to certain protections from creditor action under sections 1201 and 1301 of the Bankruptcy Code.

Debtors that have no codebtors should check the box provided and proceed to the next schedule.

FORM B61
(6/90)

In re _____

Debtor

Case No. _____

(If known)

SCHEDULE I—CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE		
	NAMES	AGE	RELATIONSHIP

EMPLOYMENT:	DEBTOR	SPOUSE
Occupation		
Name of Employer		
How long employed		
Address of Employer		

Income: (Estimate of average monthly income)	DEBTOR	SPOUSE
Current monthly gross wages, salary, and commissions (pro rata if not paid monthly.)	\$ _____	\$ _____
Estimated monthly overtime	\$ _____	\$ _____
SUBTOTAL	\$ _____	\$ _____
LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	\$ _____	\$ _____
b. Insurance	\$ _____	\$ _____
c. Union dues	\$ _____	\$ _____
d. Other (Specify _____)	\$ _____	\$ _____
SUBTOTAL OF PAYROLL DEDUCTIONS	\$ _____	\$ _____
TOTAL NET MONTHLY TAKE HOME PAY	\$ _____	\$ _____
Regular income from operation of business or profession or farm (attach detailed statement)	\$ _____	\$ _____
Income from real property	\$ _____	\$ _____
Interest and dividends	\$ _____	\$ _____
Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above.	\$ _____	\$ _____
Social security or other government assistance (Specify) _____	\$ _____	\$ _____
Pension or retirement income	\$ _____	\$ _____
Other monthly income	\$ _____	\$ _____
(Specify) _____	\$ _____	\$ _____
	\$ _____	\$ _____
TOTAL MONTHLY INCOME	\$ _____	\$ _____
TOTAL COMBINED MONTHLY INCOME \$ _____	(Report also on Summary of Schedules)	

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

INSTRUCTIONS FOR COMPLETING SCHEDULE I**SCHEDULE OF CURRENT INCOME OF INDIVIDUAL DEBTOR(S)**

The Bankruptcy Code requires all debtors to file a statement of current income and current expenditures. 11 U.S.C. § 521(1). Although the schedules contain forms on which individuals must report this information, no form is prescribed for a corporation or partnership. A corporation or partnership also must file a statement that provides the required information, but must devise its own form for this purpose.

The individual debtor should total the monthly income for the debtor and, in a joint case or a chapter 12 or chapter 13 case filed by a married debtor, the debtor's spouse and place the total on the line provided. The total combined monthly income should be placed on the form and reported on the Summary of Schedules under the column labeled "Other."

Debtors should include a description of any anticipated increase or decrease of over ten percent (10%) in any category that may occur within the year following the filing of Schedule I.

FORM 86J
(6/90)On file _____
Debtor _____Case No. _____
CIT - (none)**SCHEDULE J—CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)**

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

Rent or home mortgage payment (include lot rented for mobile home)	\$ _____
Are real estate taxes included? Yes _____ No _____	
Is property insurance included? Yes _____ No _____	
Utilities Electricity and heating fuel	\$ _____
Water and sewer	\$ _____
Telephone	\$ _____
Other _____	\$ _____
Home Maintenance (Repairs and upkeep)	\$ _____
Food	\$ _____
Clothing	\$ _____
Laundry and dry cleaning	\$ _____
Medical and dental expenses	\$ _____
Transportation (not including car payments)	\$ _____
Recreation, clubs and entertainment, newspapers, magazines, etc.	\$ _____
Charitable contributions	\$ _____
Insurance (not deducted from wages or included in home mortgage payments)	
Homeowner's or renter's	\$ _____
Life	\$ _____
Health	\$ _____
Auto	\$ _____
Other _____	\$ _____
Taxes (not deducted from wages or included in home mortgage payments)	
(Specify) _____	\$ _____
Installment payments	
(In chapter 12 and 13 cases, do not list payments to be included in the plan)	
Auto	\$ _____
Other _____	\$ _____
Other _____	\$ _____
Alimony, maintenance, and support paid to others	\$ _____
Payments for support of additional dependents not living at your home	\$ _____
Regular expenses from operation of business, profession, or farm (attach detailed statement)	\$ _____
Other _____	\$ _____
 TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)	 \$ _____

(FOR CHAPTER 12 DEBTORS ONLY)

Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

A. Total projected monthly income	\$ _____
B. Total projected monthly expenses	\$ _____
C. Excess income (A minus B)	\$ _____
D. Total amount to be paid into plan each _____	\$ _____

INSTRUCTIONS FOR COMPLETING SCHEDULE J**SCHEDULE OF CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)**

The Bankruptcy Code requires all debtors to file a statement of current income and current expenditures. 11 U.S.C. § 521(1). Although the Schedules contain forms on which individuals must report this information, no form is prescribed for a corporation or partnership. A corporation or partnership also must file a statement that provides the required information, but must devise its own form for this purpose.

Joint debtors should check the box at the top of the form only if the debtor's spouse maintains a separate household. In such a case, a separate schedule of expenses labeled "Spouse" should be completed.

After completing the schedule, the debtor should total the monthly expenses and report the total on the Summary of Schedules under the column labeled "Other." Upon the completion of all the schedules, the debtor should go back to the Summary of Schedules and total all columns before signing the Declaration Concerning Debtor's Schedules.

Form B6-Cont.
(12/94)

In re _____,
Debtor (If known)

Case No. _____

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of _____ sheets, and
(Total shown on summary page plus 1)
that they are true and correct to the best of my knowledge, information, and belief.

Date _____

Signature: _____
Debtor

Date _____

Signature: _____
(Joint Debtor, if any)

[If joint case, both spouses must sign.]

CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed or Typed Name of Bankruptcy Petition Preparer

Social Security No. _____

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

X _____
Signature of Bankruptcy Petition Preparer

_____ Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, the _____ [the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership] of the _____ [corporation or partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of _____ sheets, and

(Total shown on summary page plus 1)

that they are true and correct to the best of my knowledge, information, and belief.

Date _____

Signature: _____

[Print or type name of individual signing on behalf of debtor.]

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571

**INSTRUCTIONS FOR COMPLETING DECLARATION
CONCERNING DEBTOR'S SCHEDULES**

After completing all the schedules and the Summary of Schedules, debtors should complete the Declaration Concerning Debtor's Schedules.

The schedules are a "document for filing" that may be prepared by a "bankruptcy petition preparer" as defined in 11 U.S.C. § 110. Accordingly, a signature line for such preparer is provided. In addition to signing, a bankruptcy petition preparer is required by section 110 to disclose the information requested. If more than one person prepared the document, additional signed sheets conforming to the certification on the Official Form must be attached for each person.

The authorized agent of a debtor corporation or debtor partnership should sign and date the declaration on behalf of the debtor.

Advisory Committee Note

These schedules shall be used to comply with § 521(1) of the Code and Rule 1007(b). Schedules A, B, D, E, and F constitute the schedule of assets and liabilities. Schedules I and J constitute a schedule of current income and current expenditures for individual and joint debtors. Two new schedules have been created, Schedule G—Executory Contracts and Unexpired Leases, and Schedule H—Codebtors.

The order of the schedules has been arranged with the summary sheet in front and with the schedules of assets appearing first, followed by the schedules of liabilities. This structure corresponds to the customary pattern by which trustees and creditors review these documents and to the format of the accounting profession for balance sheets.

The schedules require a complete listing of assets and liabilities but leave many of the details to investigation by the trustee. Instructions in the former schedules to provide details concerning "written instruments" relating to the debtor's property or debts have been deleted. Section 521(3) of the Code requires the debtor to cooperate with the trustee, who can administer the estate more effectively by requesting any documents from the debtor rather than relying on descriptions in the schedules which may prove to be inaccurate.

Leasehold interests in both real and personal property are to be reported in Schedule G—Executory Contracts and Unexpired Leases. This information should not be repeated in the schedules of assets.

Generally in these schedules, a creditor's claim will be listed only once, even if the claim is secured only in part, or is entitled only in part to priority under § 507(a) of the Code, with the remainder of the claim to be treated as a general unsecured claim. For example, a partially secured creditor whose claim is reported in Schedule D—Creditors Holding Secured Claims will be listed together with the value of the property securing the claim and a notation of the amount of any unsecured portion of the claim. Information concerning the unsecured portion should not be repeated in Schedule F—Creditors Holding Nonpriority Unsecured Claims. Any resulting overstatement of the amounts owed on secured and priority claims as reported on the summary sheet is offset by a corresponding understatement of the amount owed on unsecured claims.

If a debtor has no property or no creditors in a particular category, an affirmative statement to that effect is required. Married debtors should

indicate whether property is jointly or separately owned and whether spouses are jointly or separately liable for debts, using the columns provided in the schedules.

Former "Schedule B-3. Property not otherwise scheduled," has been deleted and its two questions moved. Schedule B—Personal Property now includes at item 33, "Other personal property of any kind not already listed." The only other question on former Schedule B-3 concerned assignments for the benefit of creditors; it has been moved to the Statement of Financial Affairs.

Schedule A—Real Property. Instructions at the top of the form indicate the scope of the interests in property to be reported on the schedule. Leasehold interests of the debtor are not reported here but on the Schedule of Executory Contracts and Unexpired Leases. The trustee will request copies of deeds or other instruments necessary to the administration of the estate.

Schedule B—Personal Property. This schedule is to be used for reporting all of the debtor's interests in personal property except leases and executory contracts, which are to be listed on the Schedule of Executory Contracts and Unexpired Leases. Several new categories of property have been added to the schedule, i.e., aircraft, and interests in IRA, ERISA, Keogh, or other pension or profit-sharing plans. To minimize the potential for concealment of assets, the debtor must declare whether the debtor has any property in each category on the schedule. The trustee can request copies of any documents concerning the debtor's property necessary to the administration of the estate.

Schedule C—Property Claimed as Exempt. The form of the schedule has been modified to eliminate duplication of information provided elsewhere. The location of property, for example, which formerly was required here, is disclosed in the schedules of real and personal property. The requirement that the debtor state the present use of the property also has been eliminated as best left to inquiry by the trustee. Exemptions in some states are granted by constitutional provisions; accordingly, the requirement that the debtor state the "statute" creating an exemption has been changed to request a statement of the relevant "law."

This schedule adds a new requirement that the debtor state the market value of the property in addition to the amount claimed as exempt.

Schedule D—Creditors Holding Secured Claims. Schedules D, E, and F have been redesigned with address boxes sized to match the number of characters which can be accommodated on the computerized noticing systems used by the courts. The size also closely approximates that of standard mailing labels. Space is designated at the top of the box for the debtor's account number with the creditor. The design of the form is intended to reduce the volume of misdirected creditor mail.

The form requires the debtor to state affirmatively that a claim is disputed, unliquidated, or contingent. The existence of any type of codebtor is to be disclosed, but details are to be provided in Schedule H, as they are not needed here. Duplication of information also has been kept to a minimum by deleting requests that the debtor indicate on this schedule whether a debt has been reduced to judgment and the date on which a creditor repossessed any collateral. Requests for details concerning negotiable instruments and the consideration for a claim, formerly part of the schedule, are left to the trustee's inquiries.

Schedule E—Creditors Holding Unsecured Priority Claims. The schedule lists all of the types of claims entitled to priority and requires the debtor to indicate the existence of claims in each category. Continuation sheets are provided. The type of priority claim is to be noted at the top of the continuation sheet, and each type must be reported on a separate sheet. This schedule also requires the debtor to indicate the existence of any codebtors. As in Schedule D—Creditors Holding Secured Claims, requests for information concerning judgments and negotiable instruments have been deleted.

Schedule F—Creditors Holding Unsecured Nonpriority Claims. This schedule has been revised generally in conformity with the other schedules of creditors. If a claim is subject to setoff, the debtor is required to so state.

Schedule G—Executory Contracts and Unexpired Leases. Rule 1007(b) requires the debtor to file a schedule of executory contracts and unexpired leases, unless the court orders otherwise. All unexpired leases of either real or personal property are to be reported on this schedule. The schedule also requires the debtor to disclose specific information to assist the trustee in identifying leases which must be assumed within 60 days after the order for relief or be deemed rejected under § 365(d) of the Code.

Schedule H—Schedule of Codebtors. This schedule is designed to provide the trustee and creditors with information about codebtors of all types other than spouses in joint cases. The completed schedule provides information concerning non-debtor parties, such as guarantors and non-debtor spouses having an interest in property as tenants by the entirety. In chapter 12 and chapter 13 cases, the completed schedule also indicates those persons who may be entitled to certain protections from creditor action under §§ 1201 and 1301 of the Code.

Schedule I—Schedule of Current Income of Individual Debtor(s) and Schedule J—Schedule of Current Expenditures of Individual Debtor(s). Former Official Form No. 6A has been divided into a schedule of current income and a separate schedule of current expenditures. The language is substantially the same as in former Official Form No. 6A. In light of the abrogation of Official Form No. 10, the Chapter 13 Statement, style changes have been made so that these schedules can be used by individual and joint debtors in all chapters.

Advisory Committee Note to 1993 Amendment

Schedule E (Creditors Holding Unsecured Priority Claims) has been changed to conform to the statutory amendment that added subsection (a)(8) to § 507 of the Code. Pub.L. No. 101-647, (Crime Control Act of 1990), added the new subsection, which had the effect of creating an eighth priority for claims of certain governmental units based on commitments to maintain the capital of an insured depository institution.

Advisory Committee Note to 1995 Amendment

Schedule E—Creditors Holding Unsecured Priority Claims is amended to add the new seventh priority afforded to debts for alimony, maintenance, or support of a spouse, former spouse, or child of the debtor by the Bankruptcy Reform Act of 1994. Statutory references are amended to conform to the paragraph numbers of section 507(a) of the Code as renumbered by the 1994 Act. Schedule E also is amended to add commissions owed to certain independent sales representatives and to raise the maximum dollar amounts

for certain priorities in accordance with amendments made by the 1994 Act to section 507(a) of the Code. The 1994 Act also amended section 104 of the Code to provide for future adjustment of the maximum dollar amounts specified in section 507(a) to be made by administrative action at three-year intervals to reflect changes in the consumer price index. Schedule E is amended to give notice that these dollar amounts are subject to change without formal amendment to the official form.

The Schedules are a “document for filing” that may be prepared by a “bankruptcy petition preparer” as defined in 11 U.S.C. § 110, which was added to the Code by the 1994 Act; accordingly, a signature line for such preparer is added. In addition to signing, a bankruptcy petition preparer is required by section 110 to disclose the information requested.

Advisory Committee Note to 1997 Amendment

The form is amended to add to the column labels a reference to community liability for claims. The amendment is technical and corrects an editorial oversight.

Form 7

STATEMENT OF FINANCIAL AFFAIRS

Official Form 7
(1/95)

UNITED STATES BANKRUPTCY COURT

District of _____In Re: _____,
DebtorCase No. _____
(If known)
Chapter _____

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs.

Questions 1-15 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 16-21. **If the answer to any question is "None," or the question is not applicable, mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within the two years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or person in control of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed.

"Insider." The term "insider" includes but is not limited: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any person in control of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

1. Income from employment or operation of business

- None State the gross amount of income the debtor has received from
☐ employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal

rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed).

AMOUNT

SOURCE (if more than one)

2. Income other than from employment or operation of business

None State the amount of income received by the debtor other than

- ☐ from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

3. Payment to creditors

None a. List all payments on loans, installment purchases of goods or

- ☐ services, and other debts, aggregating more than \$600 to any creditor, made within **90 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS
OF CREDITOR

DATES OF
PAYMENTS

AMOUNT
PAID

AMOUNT
STILL OWING

None b. List all payments made within **one year** immediately preceding

- ☐ the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF
CREDITOR AND
RELATIONSHIP TO
DEBTOR

DATE OF
PAYMENT

AMOUNT
PAID

AMOUNT
STILL OWING

4. Suits and administrative proceedings, executions, garnishments and attachments

None a. List all suits and administrative proceedings to which the debtor is

- ☐ or was a party within **one year** immediately preceding the filing of

this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEED- ING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
------------------------------------	------------------------------	------------------------------------	--------------------------

- None ☐ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
--	--------------------	---

5. Repossessions, foreclosures and returns

- None ☐ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
--	--	---

6. Assignments and receiverships

- None ☐ a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
---------------------------------	-----------------------	---

- None ☐ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
	CASE TITLE & NUMBER		

7. Gifts

None List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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8. Losses

None List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case.** (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS

9. Payments related to debt counseling or bankruptcy

None List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY

10. Other transfers

- None a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)
- ☐

NAME AND ADDRESS
OF TRANSFEREE,
RELATIONSHIP
TO DEBTOR

DATE

DESCRIBE PROPERTY
TRANSFERRED AND
VALUE RECEIVED

11. Closed financial accounts

- None List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)
- ☐

NAME AND ADDRESS
OF INSTITUTION

TYPE AND NUMBER
OF ACCOUNT AND
AMOUNT OF FINAL
BALANCE

AMOUNT AND
DATE OF SALE
OR CLOSING

12. Safe deposit boxes

- None List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)
- ☐

NAME AND
ADDRESS OF
BANK OR OTHER
DEPOSITORY

NAMES AND
ADDRESSES
OF THOSE
WITH ACCESS
TO BOX OR
DEPOSITORY

DESCRIPTION
OF
CONTENTS

DATE OF
TRANSFER
OR SURRENDER,
IF ANY

13. Setoffs

- None List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses wheth-
- ☐

er or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
------------------------------	-------------------	---------------------

14. Property held for another person

None List all property owned by another person that the debtor holds
☐ or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
------------------------------	---	-------------------------

15. Prior address of debtor

None If the debtor has moved within the **two years** immediately
☐ preceding the commencement of this case, list all premises which the
debtor occupied during that period and vacated prior to the com-
mencement of this case. If a joint petition is filed, report also any
separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within the two years immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or otherwise self-employed.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within the two years immediately preceding the commencement of this case.)*

16. Nature, location and name of business

None a. If the debtor is an individual, list the names and addresses of all
☐ businesses in which the debtor was an officer, director, partner, or
managing executive of a corporation, partnership, sole proprietorship,
or was a self-employed professional within the **two years** immediately
preceding the commencement of this case, or in which the debtor
owned 5 percent or more of the voting or equity securities within the
two years immediately preceding the commencement of this case.

b. If the debtor is a partnership, list the names and addresses of all
businesses in which the debtor was a partner or owned 5 percent or
more of the voting securities, within the **two years** immediately
preceding the commencement of this case.

c. If the debtor is a corporation, list the names and addresses of all
businesses in which the debtor was a partner or owned 5 percent or

more of the voting securities within the **two years** immediately preceding the commencement of this case.

		NATURE OF BUSINESS	BEGINNING AND ENDING DATES OF OPERATION
NAME	ADDRESS		

d. Identify any business listed in response to subdivision a., b., or c., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS
------	---------

17. Books, records and financial statements

None a. List all bookkeepers and accountants who within the **six years**
☐ immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED
------------------	-------------------------

None b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.
☐

NAME	ADDRESS	DATES SERVICES RENDERED
------	---------	-------------------------

None c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.
☐

NAME	ADDRESS
------	---------

None d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the **two years** immediately preceding the commencement of this case by the debtor.
☐

NAME AND ADDRESS	DATE ISSUED
------------------	-------------

18. Inventories

- None a. List the dates of the last two inventories taken of your property,
☐ the name of the person who supervised the taking of each inventory,
 and the dollar amount and basis of each inventory.

DATE OF INVENTORY	INVENTORY SUPERVISOR	DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)
----------------------	----------------------	---

- None b. List the name and address of the person having possession of the
☐ records of each of the two inventories reported in a., above.

DATE OF INVENTORY	NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS
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19. Current Partners, Officers, Directors and Shareholders

- None a. If the debtor is a partnership, list the nature and percentage of
☐ partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST
------------------	-----------------------	---------------------------

- None b. If the debtor is a corporation, list all officers and directors of the
☐ corporation, and each stockholder who directly or indirectly owns,
 controls, or holds 5 percent or more of the voting securities of the
 corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP
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20. Former partners, officers, directors and shareholders

- None a. If the debtor is a partnership, list each member who withdrew
☐ from the partnership within **one year** immediately preceding the
 commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL
------	---------	--------------------

- None b. If the debtor is a corporation, list all officers, or directors whose
☐ relationship with the corporation terminated within **one year** imme-
 diately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION
------------------	-------	---------------------

21. Withdrawals from a partnership or distributions by a corporation

None ☐ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY

[If completed by an individual or individual and spouse]

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date _____	Signature _____ of Debtor
Date _____	Signature _____ of Joint Debtor (if any)

CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed or Typed Name of Bankruptcy Petition Preparer _____	Social Security No. _____
---	---------------------------

Address _____

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

X _____ Signature of Bankruptcy Petition Preparer	_____ Date
--	---------------

A bankruptcy petition preparer's failure to comply with the provisions of title II and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

[If completed on behalf of a partnership or corporation]

I, declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date _____

Signature _____

Print Name and Title

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

____ continuation sheets attached
Penalty for making a false statement: Fine of up to 500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. § 152 and 3571

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 7**STATEMENT OF FINANCIAL AFFAIRS****I. INTRODUCTION**

The Statement of Financial Affairs provides a summary of the debtor's financial history, transactions, and operations over certain periods of time before the commencement of this case, as specified in the questions. It is important for debtors to pay special attention to these different time periods as requested in the items below. For example, when an item asks the debtor to list payments made to creditors within 90 days of the commencement of this case, that means the debtor should list only those payments to creditors made during the 90-day period before the date of the filing of the bankruptcy petition.

This form should be cross-checked for consistency with assets listed in Schedule A (real property), Schedule B (personal property), and Schedule G (executory contracts and unexpired leases).

The Statement of Financial Affairs must be completed by all debtors,

Items 1–15 should be completed by all debtors. In addition, items 16–21 are to be completed by debtors that are or have been in business. Official Form 7 provides definitions for the terms “in business” and “insider,”

If the answer to any numbered item in the form is “None,” or the question is not applicable, the debtor should mark the box labeled “None.” In the event sufficient space is not provided to fully answer any questions, the debtor should use continuation sheets and attach them to the form. Each continuation sheet should be clearly marked with the corresponding number of the question from the form.

II. APPLICABLE LAW AND RULES

The Bankruptcy Code and Federal Rules of Bankruptcy Procedure (referred to as “Bankruptcy Rules” or “Fed. R. Bankr. P.”) require a debtor to perform many duties. One such duty is to file a statement of financial affairs. 11 U.S.C. § 521(1); Fed. R. Bankr. P. 1007(b)(1). This statement must be filed with the bankruptcy petition in a voluntary case, or if the petition is accompanied by a list of all the creditors and addresses, within 15 days after the filing of the petition. Fed. R. Bankr. P. 1007(c). In an involuntary case, the debtor must file the statement of financial affairs within 15 days after the entry of the order for relief, i.e., a court order that places the debtor in an involuntary bankruptcy case. *Id.*

An extension of time for filing the statement may be granted by the court only on motion for cause shown and on notice to the United States trustee, any committee, trustee, examiner, or other party as directed by the court. *Id.*

A statement filed before the case is converted to chapter 7 will be treated as filed in the chapter 7 case, unless the court directs otherwise. Fed. R. Bankr. P. 1019(1).

At any time before the case is closed, a statement of financial affairs may be amended by the debtor as a matter of course. Fed. R. Bankr. P. 1009(a). The debtor must give notice of the amendment to the trustee and any entity affected by the amendment.

III. DIRECTIONS

Items 1–15 are to be completed by all debtors.

1. Income from Employment or Operation of Business

This item requires the debtor to state the gross amount of income received from employment, trade, or profession, or from operation of the debtor's business. Debtors should note that the information is required for the following two time periods: (1) from the beginning of this calendar year to the date of the commencement of the case, and (2) two years before the calendar year in which the case is commenced. The form allows debtors to use a fiscal year rather than a calendar year, if necessary. The amount and source of the income should be listed for each time period. Spouses that have filed a joint petition should list the income for each spouse separately. Married chapter 12 and 13 debtors must list the income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

2. Income Other than from Employment or Operation of Business

All other income, other than from employment, trade, or profession, or from operation of the debtor's business, that the debtor received during the two years before the commencement of the case should be disclosed under item 2. This category may include, but is not limited to, income from tax refunds. Social Security and other public benefit payments, alimony, child support, interest, dividends, pensions, annuities, capital gains, money judgments from lawsuits, royalties, licenses, rents, leases, and subleases. The amount and source of the income should be listed in the space provided. Spouses that have filed a joint petition should list the income for each spouse separately. Married chapter 12 and 13 debtors must list the income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

3. Payments to Creditors

Item 3 directs the debtor to list payments to creditors within two specific time periods. Debtors should include payments to creditors on secured and unsecured debt. Married chapter 12 and 13 debtors must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

- a. All payments on loans, installment purchases of goods or services, and other debts, the total of which is more than \$600 paid to any creditor, made within 90 days before the commencement of the bankruptcy case, should be listed under item 3(a).
- b. All payments, made within one year before the commencement of the bankruptcy case that were made either to a creditor or for the benefit of a creditor who is or was an insider, should be listed under item 3(b). The definition of an "insider" appears on the form.

Each creditor should be listed separately with the date of each payment, amount of each payment, and balance still owing on the debt. The relationship of the creditor to the debtor should be disclosed under item 3(b).

4. Suits, Administrative Proceedings, Executions, Garnishments, and Attachments

In Item 4(a) the debtor must list all law suits and administrative proceedings, to which the debtor was a party within one year before filing the bankruptcy case. This includes, but is not limited to, divorce proceedings and state and federal administrative proceedings. Debtors must list each suit or administrative proceeding and case number separately, a description of the nature of the proceeding, the court or agency and location of the proceeding, and the status of any pending proceeding or the disposition

(final result) of any proceeding. Married chapter 12 and 13 debtors must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Item 4(b) requests the debtor to describe all property that has been attached, garnished, or seized under any legal or equitable process within one year before the commencement of the bankruptcy case. This includes, but is not limited to, wage garnishments, tax liens, and workmens' liens. Debtors should list separately the name and address of each person or entity for whose benefit property was attached, garnished, or seized, the date of such action, and a description and value of the property. Married chapter 12 and 13 debtors must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

5. Repossessions, Foreclosures, and Returns

Debtors should list all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within one year before the commencement of the case. The name and address of each creditor or seller, the date of repossession, foreclosure, sale, transfer, or return, and a description and value of the property should be included. This item would include repossession or voluntary return of any personal property, such as vehicles, tools, or household goods, as well as foreclosure and sale of any real estate. Married chapter 12 and 13 debtors must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

6. Assignments and Receiverships

Item 6(a) asks the debtor to describe any assignment of property for the benefit of creditors made within 120 days before the commencement of the case. The name and address of the assignee, date of assignment, terms of the assignment or settlement should also be described.

Married chapter 12 and 13 debtors must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Item 6(b) asks the debtor to list all property which has been in the hands of a custodian, receiver, or court-appointed official within one year before the commencement of the case. The name and address of the custodian, the name and location of the court, case title, case number, the date of the order, and a description and the value of the property should be included. This does not include a chapter 7 bankruptcy trustee. Married chapter 12 and 13 debtors must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

7. Gifts

The debtor must list all gifts or charitable contributions made within one year before the commencement of the case, except ordinary and usual gifts to family members that total less than \$200 in value per person and charitable contributions that total less than \$100 per recipient. The name and address of the person or organization, relationship to the debtor, date of the gift, and a description and the value of the gift must be listed. Item 7 includes both cash and non-cash items. Married chapter 12 and 13 debtors must include gifts or contributions by either or both spouses

whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

8. Losses

Debtors must list all losses from fire, theft, other casualty, or gambling within one year before the commencement of the case or since the commencement of the case. Debtors should describe the property and state its value, describe the circumstances of the loss, and explain if any loss was covered in whole or in part by insurance. The date of the loss should also be included. Pending claims from insurance coverage should also be included on Schedule B. Married chapter 12 and 13 debtors must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

9. Payments Related to Debt Counseling or Bankruptcy

This item requires debtors to list all payments made to or property transferred by or on behalf of the debtor to any person, including attorneys and persons who are not attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law, or preparation of a bankruptcy petition within one year before the commencement of the case. Debtors are requested to include the name and address of the person or entity paid, the date of the payment, the name of the pay or if other than the debtor, the amount of money paid or a description and value of the property.

10. Other Transfers

Item 10 requires the debtor to list all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within one year before the commencement of the case. The name and address of the person or entity that received the property, and the relationship to the debtor should be listed. Any security interest that meets the foregoing criteria should be listed. The date of the transfer, a description of the property transferred, and the value received should also be included. Married chapter 12 and 13 debtors must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

11. Closed Financial Accounts

In Item 11 the debtor must list all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within one year before the commencement of the case. These include checking, savings, or other financial accounts, certificates of deposit, or other instruments, shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses, and other financial institutions. Other examples include any Individual Retirement Accounts (commonly called "IRAs"), mutual funds, bonds, savings plans, and annuities. Debtors should list the name and address of the institution, type and number of the account, amount of the final balance, and the amount and the date of any sale or closing. Married chapter 12 and 13 debtors must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

12. Safe Deposit Boxes

Item 12 requires the debtor to list each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within one year before the commencement of the case. Debtors are asked to include the name and address of

the bank or depository, the names and addresses of those with access to the box or depository, a description of the contents, and the date of any transfer or surrender. Married chapter 12 and 13 debtors must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

13. Setoffs

Item 13 asks the debtor to list all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within 90 days before the commencement of this case. A "setoff is when part or all of a debt owed by the debtor to the creditor is "canceled out" by a pre-existing debt owed by the creditor to the debtor. Since certain pre-petition setoffs taken by a creditor may be subject to recovery by the bankruptcy estate, it is important that all setoffs be accounted for in this form. Debtors must include the name and address of the creditor, the date of setoff, and the amount of the setoff. Married chapter 12 and 13 debtors must include information concerning transactions of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

14. Property Held for Another Person

Item 14 directs the debtor to list all property owned by another person that the debtor holds or controls. Debtors should list the name and address of the owner, a description and the value of the property, and the location of the property. Examples of this type of property may include property the debtor holds or controls in the capacity of a trustee, as a bailee, or property on consignment.

15. Prior Address of Debtor

Debtors that have moved within the two years before the commencement of the case must list all premises which the debtor occupied during that period and vacated prior to the commencement of the bankruptcy case. Spouses filing a joint petition should list any separate addresses individually for each spouse, including the name used and the dates of occupancy.

Questions 16–21:

Items 16–21 are to be completed by individual debtors, joint debtors, corporations, and partners (other than a limited partner) of a partnership that are or have been "in business," as defined on the form. An individual or joint debtor should complete items 16–21 **only** if the debtor is or has been in business, as defined on the form, within the two years before the commencement of the case. Care should be used to provide information for the years specified in each item. Additional sheets may be attached, if necessary. All non-business debtors should proceed to "Signatures of Debtors" below.

16. Nature, Location, and Name of Business

a. Individual debtors must list the names and addresses of all businesses in which the debtor was an officer, director, partner (other than a limited partner) of a partnership, or managing executive of a corporation, partnership, sole proprietorship, or a self-employed professional, within the two years before the filing of the voluntary bankruptcy petition or the order for relief in an involuntary case. In addition, the debtor must list the names and addresses of all businesses in which the debtor owned five percent or more of the voting or equity securities, within the same two years before the commencement of the case.

b. Partnership debtors are asked to list the names and addresses of all businesses in which the debtor was a partner or owned five percent or more of the voting securities, within the two years before the commencement of the case.

c. Corporate debtors are asked to list the names and addresses of all businesses in which the debtor was a partner or owned five percent or more of the voting securities, within the two years before the commencement of the case.

All of the above types of debtors should state the name, address, nature of the business, and the beginning and ending dates of operation in the spaces provided.

17. Books, Records, and Financial Statements

a. Business debtors must list all bookkeepers and accountants who kept or supervised the keeping of books of account and records of the debtor, within the six years before the filing of the bankruptcy case. The name, address, and dates of services rendered should be placed in the space provided.

b. Business debtors must list all firms or individuals who have audited the books of account and records or prepared a financial statement of the debtor, within the two years before the filing of the bankruptcy case. The name, address, and dates of services rendered should be placed in the space provided.

c. All firms or individuals who were in possession of the books of account and records of the debtor, at the time of the commencement of this case, should be listed. The name and address of the firms or individuals should be placed in the space provided.

d. All financial institutions, creditors, and other parties, including mercantile and trade agencies, to whom the debtor issued a financial statement, within the two years before the commencement of the case, should be listed. The name and address of the entity and the date the financial statement was issued should be placed in the space provided.

18. Inventories

a. State the dates of the last two inventories taken of the debtor's property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory. Space is provided for the date of each inventory, the inventory supervisor, and the dollar amount. Debtors are asked to specify the cost, market or other basis.

b. State the name and address of the person having possession of the records of each of the two inventories reported in item 18(a) above. Space is provided to list the date of the inventory and the name and address of the custodian of the inventory records.

19. Current Partners, Officers, Directors, and Shareholders

a. Partnership debtors must list the nature and percentage of the partnership interest of each partner (member of the partnership), including general partners and limited partners. Space is provided to list the name and address, nature of the interest, and percentage of the partnership interest of each member of the partnership.

b. Corporate debtors must list all officers and directors of the corporation and each stockholder, who directly or indirectly owns, controls, or holds five percent or more of the voting securities of the corporation. Space is provided to list the name and address, title, and nature and percentage of stock ownership.

20. Former Partners, Officers, Directors, and Shareholders

a. Partnership debtors must list each partner (member of the partnership), including general partners and limited partners, that withdrew from the partnership within one year before the commencement of the case. Space is provided to list the name, address, and date of withdrawal.

b. Corporate debtors must list all officers or directors whose relationship with the corporation terminated within one year before the commencement of the case. Space is provided for the name and address, title, and date of termination.

21. Withdrawals from a Partnership or Distributions by a Corporation

Partnership debtors and corporate debtors must disclose all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised, and any other benefit during one year before the commencement of the case. Space is provided to list the name and address of the recipient, relationship to the debtor, the date and purpose of the withdrawal, and the amount of money or a description and value of any applicable property.

Signatures of Debtors

It is very important that all debtors sign and date the Statement of Financial Affairs. Both spouses should sign in a joint case. By signing the Statement of Financial Affairs, the debtor(s) is declaring, under penalty of perjury, that the information in the form is true and correct.

Certification and Signature of Non-Attorney Bankruptcy Petition Preparer

The Statement of Financial Affairs is a “document for filing” that may be prepared by a “bankruptcy petition preparer” as defined in 11 U.S.C. § 110. Accordingly, a signature line for such preparer is provided. In addition to signing and dating the form, a bankruptcy petition preparer is required by section 110 to disclose the information requested. If more than one person prepared the document, additional signed sheets conforming to the certification on the Official Form must be attached for each person.

Signature of Individual Signing on Behalf of a Partnership or Corporation

There is also a section for the partnership or corporate debtor. Individuals and joint debtors should leave this space blank. The individual authorized by the debtor entity (partnership, corporation, etc.) to file the petition should sign the Statement of Financial Affairs on behalf of the debtor and include the individual’s name, title, and the date on the lines provided. The authorized agent of a debtor corporation or debtor partnership should indicate the agent’s position or relationship to the debtor. By signing the petition, the authorized individual is representing that the information in the Statement of Financial Affairs is true and correct.

Continuation Sheets

Debtors should count the number of continuation sheets and place that number in the space provided. Continuation sheets should be attached to the Statement of Financial Affairs.

Advisory Committee Note

This form consolidates questions from former Official Forms No. 7, No. 8, and No. 10. This form is to be completed by all debtors. An individual

debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs.

The Chapter 13 Statement, former Official Form No. 10, has been abrogated. Chapter 13 debtors are to complete this statement and the schedules prescribed in Official Form 6.

All questions have been converted to affirmative directions to furnish information, and each question must be answered. If the answer is "none," or the question is not applicable, the debtor is required to so state by marking the box labeled "None" provided at each question.

See Committee Note to Form 2 for a discussion of the unsworn declaration at the end of this form.

Advisory Committee Note to 1993 Amendment

The form has been amended in two ways. In the second paragraph of the instructions, the third sentence has been deleted to clarify that only a debtor that is or has been in business as defined in the form should answer Questions 16-21. In addition, administrative proceedings have been added to the types of legal actions to be disclosed in Question 4.a.

Advisory Committee Note to 1995 Amendment

This form is a "document for filing" that may be prepared by a "bankruptcy petition preparer" as defined in 11 U.S.C. § 110, which was added to the Code by the Bankruptcy Reform Act of 1994; accordingly, a signature line for such preparer is added. In addition to signing, a bankruptcy petition preparer is required by section 110 to disclose the information requested.

Form 8

INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

Official Form 8
(9/97)

United States Bankruptcy Court

District Of _____

In re _____

Debtor

Case No. _____

Chapter 7

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

1. I have filed a schedule of assets and liabilities which includes consumer debts secured by property of the estate.
2. I intend to do the following with respect to the property of the estate which secures those consumer debts:

a. *Property to Be Surrendered*

Description of Property

Creditor's name

b. *Property to Be Retained**[Check any applicable statement]*

Description of Property	Creditor's Name	Property is claimed as exempt	Property will be redemmed pursuant to 11 U.S.C. § 722	Debt will be reaffirmed pursuant to 11 U.S.C. § 524(c)

Date: _____

Signature of Debtor _____

CERTIFICATION OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed or Typed Name of Bankruptcy Petition Preparer _____

Social Security No. _____

Address _____

Names and Social Security Numbers of all other individuals who prepared or assisted in preparing this document.

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

X _____

Signature of Bankruptcy Petition Preparer

Date _____

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 8
CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

I. INTRODUCTION

An individual debtor in a chapter 7 case and an individual debtor and spouse in a joint chapter 7 case, whose schedules of assets and liabilities include consumer debts that are secured by property of the estate, are required to file a Statement of Intention (Official Form 8) with respect to the property securing those debts. 11 U.S.C. § 521(2)(A).

II. APPLICABLE LAW AND RULES

The Statement of Intention must specify whether the debtor intends to surrender or retain the property, and if applicable, indicate whether the debtor intends to retain the property through reaffirmation, or claim the property as exempt and retain the property through redemption or avoidance of any liens. 11 U.S.C. § 521(2)(A). The Statement of Intention must be filed with the clerk of the bankruptcy court within 30 days of the filing of a bankruptcy petition under chapter 7 or by the date set for the meeting of creditors under section 341 of the Bankruptcy Code, whichever is earlier, unless the court extends the time for cause. *Id.* Within 45 days of the filing of this statement, the debtor must perform the intention with respect to the property, unless the court extends the time for cause. 11 U.S.C. § 521(2)(B).

A copy of the Statement of Intention must be served on the chapter 7 trustee and creditors that are listed in the statement on or before the date the statement is filed with the court. Fed. R. Bankr.P. 1007(b)(2).

The debtor may amend the Statement of Intention at any time before the expiration of the period provided in 11 U.S.C. § 521(2)(B). The debtor must give notice to the trustee and to any entity affected by the amendment. Federal Rule of Bankruptcy Procedure 1009(b) (referred to as "Bankruptcy Rule" or "Fed. R. Bankr. P."). A copy of every amendment will be transmitted by the clerk to the U.S. trustee. Fed. R. Bankr. P. 1009(c).

In a joint case, if the property and debts of both debtors are the same, the form may be adapted for joint use. Both joint debtors must sign and date the form. If joint debtors have separate debts, however, each debtor must complete, serve, and file a separate form. If only one of the joint debtors is liable on the secured debts, the spouse who is not liable can either sign, serve, and file a separate Form 8 stating "None" or write a disclaimer stating non-liability and sign on the other spouse's form.

Terminology:

Exemptions—An individual debtor and an individual debtor and spouse in a joint case are entitled to claim certain property as exempt from the bankruptcy estate. To determine what exemptions may apply in a particular state, debtors should refer to the provisions under section 522 of the Bankruptcy Code and to the applicable state exemption laws. The Bankruptcy Code authorizes any state to limit its citizens to the exemptions provided by the state. Accordingly, some states permit debtors to choose either federal or state exemptions, while other states permit a debtor to use only the state exemptions. Exemptions are claimed by a debtor by listing the property to be exempt in Schedule C. For a further discussion of exemptions, debtors may refer to the instructions for Schedule C: Property Claimed as Exempt.

Reaffirmation—A reaffirmation agreement is an enforceable contract between the debtor and a creditor on a debt that otherwise, without the reaffirmation, would be discharged. To be enforceable, the agreement must (1) have been made before the

granting of the discharge; (2) contain a clear and conspicuous statement that advises the debtor that the agreement may be rescinded at any time prior to discharge or within 60 days after the date of the agreement, whichever occurs later; (3) contain a clear and conspicuous statement that advises the debtor that the agreement is not required under bankruptcy or nonbankruptcy law; and (4) be filed with the court. 11 U.S.C. § 524(c).

Redemption—Tangible personal property, intended primarily for personal, family, or household use, may be redeemed by an individual debtor by paying the lienholder the amount of the allowed secured claim. 11 U.S.C. § 722.

III. DIRECTIONS

1. A debtor whose schedule of assets and liabilities includes consumer debts secured by property of the estate should be sure that the debtor's schedules are consistent with this form.

2. The debtor must state the debtor's intention with respect to property of the estate that is secured by consumer debts as follows:

a. Property to Be Surrendered

Debtors should separately list and describe each item of property that the debtor intends to surrender. The creditor's name should be placed in the space provided.

b. Property to Be Retained

Debtors should separately list and describe each item of property that the debtor intends to retain. The creditor's name should be placed in the space provided. If the debtor intends to claim the property as exempt, redeem the property, or reaffirm the debt, the debtor should so indicate by placing an "X" in the space provided.

3. Signature of the Debtor

It is very important that the debtor sign the Statement of Intention. By signing the Statement of Intention the debtor affirms that the debtor understands the requirements of the Bankruptcy Code with regard to performance of the stated intention within 45 days of the filing of the statement with the court, unless the court extends the time for cause.

Certification Of Non-Attorney Bankruptcy Petition Preparer

The Statement of Intention is a "document for filing" that may be prepared by a "bankruptcy petition preparer" as defined in 11 U.S.C. § 110. Accordingly, a signature line for such preparer is provided. In addition to signing the form, a bankruptcy petition preparer is required by section 110 to disclose the information requested. If more than one person prepared the Statement of Intention, additional sheets that conform to the certification on the official form should be completed, signed, and attached. A bankruptcy petition preparer, who has completed the Statement of Intention for a debtor, must provide the debtor with a copy.

Advisory Committee Note

This form is derived from former Official Form No. 8A. Rule 1007(b)(2) requires the debtor to serve a copy of this statement on the trustee and all creditors named in the statement. In a joint case, if the property and debts of both debtors are the same, the form may be adapted for joint use. If joint debtors have separate debts, however, each debtor must use a separate form.

Advisory Committee Note to 1995 Amendment

This form is a “document for filing” that may be prepared by a “bankruptcy petition preparer” as defined in 11 U.S.C. § 110, which was added to the Code by the Bankruptcy Reform Act of 1994; accordingly, a signature line for such preparer is added. In addition to signing, a bankruptcy petition preparer is required by section 110 to disclose the information requested.

Advisory Committee Note to 1997 Amendment

The form is amended to conform more closely to the language of the Bankruptcy Code. The amendments also make clear that the form is not intended to take a position regarding whether the options stated on the form are the only choices available to the debtor. Compare *Lowry Federal Credit Union v. West*, 882 F.2d 1543 (10th Cir. 1989), with *In re Taylor*, 3 F.3d 1512 (11th Cir. 1993).

Form 9

**NOTICE OF COMMENCEMENT OF CASE
UNDER THE BANKRUPTCY CODE,
MEETING OF CREDITORS, AND DEADLINES**

Official Form 9
(9/97)

**FORM 9. NOTICE OF COMMENCEMENT OF CASE
UNDER THE BANKRUPTCY CODE, MEETING
OF CREDITORS, AND DEADLINES**

9A	Chapter 7, Individual/Joint, No-Asset Case
9B	Chapter 7, Corporation/Partnership, No-Asset Case
9C	Chapter 7, Individual/Joint, Asset Case
9D	Chapter 7, Corporation/Partnership, Asset Case
9E	Chapter 11, Individual/Joint Case
9E (Alt.)	Chapter 11, Individual/Joint Case
9F	Chapter 11, Corporation/Partnership Case
9F (Alt.)	Chapter 11, Corporation/Partnership Case
9G	Chapter 12, Individual/Joint Case
9H	Chapter 12, Corporation/Partnership Case
9I	Chapter 13, Individual/Joint Case

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 9
NOTICE OF COMMENCEMENT OF CASE UNDER THE BANKRUPTCY
CODE, MEETING OF CREDITORS, AND DEADLINES

I. INTRODUCTION

Official Form 9 is used to give notice to all creditors, equity security holders, and other interested parties of the filing of the bankruptcy case, the time, date, and location of the meeting of creditors, the time for filing a dischargeability complaint (if applicable), instructions for filing proofs of claim, and other information concerning the case.

Official Form 9 consists of several variations, numbered 9A through 9I, created to meet the specialized notice requirements for cases filed under chapters 7, 11, 12, and 13 of the Bankruptcy Code. Selection of the proper form to be used in the case is based on the chapter under which the bankruptcy petition was filed and according to the type of debtor, for example, individual, joint, corporation, or partnership. In addition, Forms 9A, 9B, 9C and 9D, used only for chapter 7 cases, are varied based on whether there are assets available to pay creditors in the chapter 7 case. The several versions of Official Form 9 are listed below:

9A	Chapter 7, Individual/Joint, No-Asset Case
9B	Chapter 7, Corporation/Partnership, No-Asset Case
9C	Chapter 7, Individual/Joint, Asset Case
9D	Chapter 7, Corporation/Partnership, Asset Case
9E	Chapter 11, Individual/Joint Case
9E (Alt.)	Chapter 11, Individual/Joint Case
9F	Chapter 11, Corporation/Partnership Case
9F (Alt.)	Chapter 11, Corporation/Partnership Case
9G	Chapter 12, Individual/Joint Case
9H	Chapter 12, Corporation/Partnership Case
9I	Chapter 13, Individual/Joint Case

Generally, the clerk will complete this form and mail a copy to the creditors and other entities whose names and addresses appear on the mailing list or mailing matrix filed by the debtor. Sometimes, the court delegates the noticing function to a chapter 13 trustee or, in a large chapter 11 case, to the debtor. The information and instructions given here for completing the form are intended primarily for information and reference, as few individuals ever are called upon to complete this form.

II. APPLICABLE LAW AND RULES

Rule 2002(a) of the Federal Rules of Bankruptcy Procedure (referred to as “Bankruptcy Rule” or “Fed. R. Bankr. P.”) requires the bankruptcy clerk (or some other person as the court may direct) to give the debtor, the trustee, all creditors and indenture trustees notice of the meeting of creditors. Creditors and other parties in interest are entitled to “not less than 20 days’ notice of the meeting. *Id.*”

III. GENERAL DIRECTIONS

Notice preparers should select the appropriate form from the list above. Only one form should be completed and used at the commencement of the case. Another form may be appropriate to use later if, for example, the case is converted to different chapter and another notice is sent to all parties in interest.

FORM B9A (Chapter 7 Individual or Joint Debtor No Asset Case (9/97))

UNITED STATES BANKRUPTCY COURT _____ District of _____	
Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines	
(A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date)) or (A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 7 on _____)	
You may be a creditor of the debtor. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.	
See Reverse Side For Important Explanations	
Debtor(s) (name(s) and address): Attorney for Debtor(s) (name and address): Telephone number: _____	Case Number: _____ Social Security/Taxpayer ID Nos.: _____ Bankruptcy Trustee (name and address): Telephone number: _____
Meeting of Creditors:	
Date: ____ / ____ / ____ Time: () A.M. Location: _____ () P.M.	
Deadlines:	
Papers must be <i>received</i> by the bankruptcy clerk's office by the following deadlines:	
Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts:	
Deadline to Object to Exemptions: Thirty (30) days after the <i>conclusion</i> of the meeting of creditors	
Creditors May Not Take Certain Actions	
The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.	
Please Do Not File A Proof of Claim Unless You Receive a Notice To Do So	
Address of the Bankruptcy Clerk's Office: Telephone number: _____ Hours Open: _____	For the Court: Clerk of the Bankruptcy Court: _____ Date: _____

EXPLANATIONS

FORM B9A (9/97)

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Creditors May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. <i>You therefore should not file a proof of claim at this time.</i> If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727(a) <i>or</i> that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
—Refer To Other Side For Important Deadlines and Notices—	

**INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 9A
NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER
7 OF THE BANKRUPTCY CODE, MEETING OF
CREDITORS, AND DEADLINES**

(Individual or Joint Debtor No Asset Case)

I. INTRODUCTION

Official Form 9A is used for an individual debtor or joint debtors (husband and wife only) in a no asset, chapter 7 case. A no asset case is one in which, after exempt property is excluded and administrative expenses paid, there will be no funds available to pay unsecured creditors.

II. APPLICABLE LAW AND RULES

Bankruptcy Rule 2002(a) requires the bankruptcy clerk (or some other person as the court may direct) to give the debtor, the trustee, all creditors and indenture trustees notice of the meeting of creditors. Creditors and other parties in interest are entitled to "not less than 20 days" notice of the meeting. *Id.*

Information on bankruptcy and the bankruptcy process is given on the back of the form.

III. DIRECTIONS

1. United States Bankruptcy Court

The preparer should identify the Judicial District in which the petition has been filed, for example, "Eastern District of California."

2. Date Case Filed (or Converted)

The date the bankruptcy case was filed should be placed in the space provided at the top of the form. If the case has been converted from another chapter to chapter 7, the date and chapter under which the case was originally filed should be included as well as the date that the order or notice of conversion was filed.

3. Debtor's Name and Address

The preparer should place the debtor's name and address (including zip code) in the box provided. In the case of joint debtors, both debtors' names and address(es) should be placed in this space. Include all names used by the debtor or joint debtors within the last six years.

4. Case Number

The preparer should place the bankruptcy case number in the box provided.

5. Social Security/Tax Identification Numbers

The preparer should place the debtor's Social Security number in the space provided. In the case of joint debtors, both debtors' Social Security numbers should be placed in this space. Include all federal tax identification numbers used by the debtor or joint debtors.

6. Name and Address of Attorney for Debtor

The preparer should insert the name and address of the attorney or law firm representing the debtor. If a law firm is representing the debtor, the preparer should also include the name of the individual attorney who actually is handling the case. (Any name inserted here should be the same as that of the attorney who signs the bankruptcy petition.) If the debtor does not have an attorney, the preparer should

place a "N/A" in the space provided. The telephone number of the debtor's attorney should be inserted in the space provided. (If the debtor is not represented by an attorney, the debtor's telephone number should NOT be inserted.)

7. Name and Address of Trustee

The preparer should insert the name, address, and telephone number of the chapter 7 trustee here.

8. Meeting of Creditors

The preparer should insert the date and time for the meeting of creditors, as well as the address at which the meeting will be held.

9. Deadlines

The date of the last day for filing a complaint objecting to the discharge of the debtor or a complaint to determine the dischargeability of certain types of debts should be placed in the space indicated.

10. Address of the Bankruptcy Clerk's Office

The address and telephone number of the bankruptcy clerk's office should appear in the space provided at the bottom left corner of the form. The hours the clerk's office is open should be placed in the space provided.

11. For the Court

The clerk's name and the date of the notice should be inserted in the space provided on the bottom right corner of the form.

FORM B9B (Chapter 7 Corporation/Partnership No Asset Case) (9/97)

UNITED STATES BANKRUPTCY COURT		District of _____
Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines		
[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date).] or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 7 on _____.]		
You may be a creditor of the debtor. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.		
See Reverse Side For Important Explanations		
Debtor (name(s) and address):	Case Number:	
	Taxpayer ID Nos.:	
Attorney for Debtor (name and address):	Bankruptcy Trustee (name and address):	
Telephone number:	Telephone number:	
Meeting of Creditors: Date: _____ Time: _____ Location: _____		
Creditors May Not Take Certain Actions: The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.		
Please Do Not File A Proof of Claim Unless You Receive a Notice To Do So		
Address of the Bankruptcy Clerk's Office:	For the Court:	
	Clerk of the Bankruptcy Court:	
Telephone number:		
Hours Open:	Date:	

EXPLANATIONS

FORM B9B (9/97)

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Creditors May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. <i>You therefore should not file a proof of claim at this time.</i> If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
—Refer To Other Side For Important Deadlines and Notices—	

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 9B
NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER
7 OF THE BANKRUPTCY CODE, MEETING OF
CREDITORS, AND DEADLINES

(Corporation/Partnership No Asset Case)

I. INTRODUCTION

Official Form 9B is used for a corporation or partnership in a no asset, chapter 7 case. A no asset case is one in which, after administrative expenses are paid, there will be no funds available to pay unsecured creditors.

II. APPLICABLE LAW AND RULES

Bankruptcy Rule 2002(a) requires the bankruptcy clerk (or some other person as the court may direct) to give the debtor, the trustee, all creditors and indenture trustees notice of the meeting of creditors. Creditors and other parties in interest are entitled to "not less than 20 days" notice of the meeting. *Id.*

Information on bankruptcy and the bankruptcy process is given on the back of the form.

III. DIRECTIONS

1. United States Bankruptcy Court

The preparer should identify the Judicial District in which the petition has been filed, for example, "Eastern District of California."

2. Date Case Filed (or Converted)

The date the bankruptcy case was filed should be placed in the space provided at the top of the form. If the case has been converted from another chapter to chapter 7, the date and chapter under which the case was originally filed should be included as well as the date that the order or notice of conversion was filed.

3. Debtor's Name and Address

The preparer should place the debtor's name and address (including zip code) in the box provided.

4. Case Number

The preparer should place the bankruptcy case number in the box provided.

5. Tax Identification Numbers

The preparer should place the debtor's federal tax identification numbers in the space provided.

6. Name and Address of Attorney for Debtor

The preparer should insert the name and address of the attorney or law firm representing the debtor. If a law firm is representing the debtor, the preparer should also include the name of the individual attorney who actually is handling the case. (Any name inserted here should be the same as that of the attorney who signs the bankruptcy petition.) The telephone number of the debtor's attorney should be inserted in the space provided.

7. Name and Address of Trustee

The preparer should insert the name, address, and telephone number of the chapter 7 trustee here.

8. Meeting of Creditors

The preparer should insert the date and time for the meeting of creditors, as well as the address at which the meeting will be held.

9. Address of the Bankruptcy Clerk's Office

The address and telephone number of the bankruptcy clerk's office should appear in the space provided at the bottom left corner of the form. The hours the clerk's office is open should be placed in the space provided.

10. For the Court

The clerk's name and the date of the notice should be inserted in the space provided on the bottom right corner of the form.

FORM B9C (Chapter 7 Individual or Joint Debtor Asset Case) (9/97)

UNITED STATES BANKRUPTCY COURT _____ District of _____	
Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines	
[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date).] or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 7 on _____.]	
You may be a creditor of the debtor. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.	
See Reverse Side For Important Explanations	
Debtor(s) (name(s) and address)	Case Number Social Security/Taxpayer ID Nos.
Attorney for Debtor(s) (name and address)	Bankruptcy Trustee (name and address):
Telephone number:	Telephone number:
Meeting of Creditors:	
Date: ____ / ____ / ____	Time: () A.M. Location () P.M.
Deadlines:	
Papers must be <i>received</i> by the bankruptcy clerk's office by the following deadlines:	
Deadline to File a Proof of Claim:	
For all creditors (except a governmental unit).	For a governmental unit:
Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts:	
Deadline to Object to Exemptions:	
Thirty (30) days after the <i>conclusion</i> of the meeting of creditors.	
Creditors May Not Take Certain Actions:	
The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.	
Address of the Bankruptcy Clerk's Office:	For the Court:
Telephone number	Clerk of the Bankruptcy Court
Hours Open	Hours

EXPLANATIONS

FORM 89C (9/97)

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Creditors May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727(a) or that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Liquidation of the Debtor's Property and Payment of Creditors' Claims	The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property that is not exempt. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you must file a Proof of Claim, as described above.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
—Refer To Other Side For Important Deadlines and Notices—	

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 9C
NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER
7 OF THE BANKRUPTCY CODE, MEETING OF
CREDITORS, AND DEADLINES

(Individual or Joint Debtor Asset Case)

I. INTRODUCTION

Official Form 9C is used for an individual debtor or joint debtors (husband and wife only) in an asset, chapter 7 case. An asset case is one in which, after exempt property is excluded and administrative expenses paid, there will be funds available to distribute to unsecured creditors.

II. APPLICABLE LAW AND RULES

Bankruptcy Rule 2002(a) requires the bankruptcy clerk (or some other person as the court may direct) to give the debtor, the trustee, all creditors and indenture trustees notice of the meeting of creditors. Creditors and other parties in interest are entitled to "not less than 20 days" notice of the meeting. *Id.*

Information on bankruptcy and the bankruptcy process is given on the back of the form.

III. DIRECTIONS

1. United States Bankruptcy Court

The preparer should identify the Judicial District in which the petition has been filed, for example, "Eastern District of California."

2. Date Case Filed (or Converted)

The date the bankruptcy case was filed should be placed in the space provided at the top of the form. If the case has been converted from another chapter to chapter 7, the date and chapter under which the case was originally filed should be included as well as the date that the order or notice of conversion was filed.

3. Debtor's Name and Address

The preparer should place the debtor's name and address (including zip code) in the box provided. In the case of joint debtors, both debtors' names and address(es) should be placed in this space. Include all names used by the debtor or joint debtors within the last six years.

4. Case Number

The preparer should place the bankruptcy case number in the box provided.

5. Social Security/Tax Identification Numbers

The preparer should place the debtor's Social Security number in the space provided. In the case of joint debtors, both debtors' Social Security numbers should be placed in this space. Include all federal tax identification numbers used by the debtor or joint debtors.

6. Name and Address of Attorney for Debtor

The preparer should insert the name and address of the attorney or law firm representing the debtor. If a law firm is representing the debtor, the preparer should also include the name of the individual attorney who actually is handling the case. (Any name inserted here should be the same as that of the attorney who signs the bankruptcy petition.) If the debtor does not have an attorney, the preparer should

place a "N/A" in the space provided. The telephone number of the debtor's attorney should be inserted in the space provided. (If the debtor is not represented by an attorney, the debtor's telephone number should NOT be inserted.)

7. Name and Address of Trustee

The preparer should insert the name, address, and telephone number of the chapter 7 trustee here.

8. Meeting of Creditors

The preparer should insert the date and time for the meeting of creditors, as well as the address at which the meeting will be held.

9. Deadlines

This section includes several deadlines. The deadlines for filing a proof of claim for a governmental unit and for all other creditors should be inserted in the spaces provided. The date of the last day for filing a complaint objecting to the discharge of the debtor or a complaint to determine the dischargeability of certain types of debts should be placed in the space indicated.

10. Address of the Bankruptcy Clerk's Office

The address and telephone number of the bankruptcy clerk's office should appear in the space provided at the bottom left corner of the form. The hours the clerk's office is open should be placed in the space provided.

11. For the Court

The clerk's name and the date of the notice should be inserted in the space provided on the bottom right corner of the form.

OFFICIAL FORMS

FORM 89D (Chapter 7 Corporation/Partnership Asset Case) (9/97)

UNITED STATES BANKRUPTCY COURT _____ District of _____	
Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines	
[A chapter 7 bankruptcy case concerning the debtor [corporation] or [partnership] listed below was filed on _____ (date)] * [A bankruptcy case concerning the debtor [corporation] or [partnership] listed below was originally filed under chapter ____ on _____ (date) and was converted to a case under chapter 7 on _____.]	
You may be a creditor of the debtor. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.	
See Reverse Side For Important Explanations	
Debtor (name(s) and address):	Case Number: Taxpayer ID Nos.:
Attorney for Debtor (name and address):	Bankruptcy Trustee (name and address):
Telephone number:	Telephone number:
Meeting of Creditors:	
Date: / / Time: () A.M. Location:	() P.M.
Deadline to File a Proof of Claim	
Proof of Claim must be received by the bankruptcy clerk's office by the following deadline: For all creditors (except a governmental unit): For a governmental unit:	
Creditors May Not Take Certain Actions:	
The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.	
Address of the Bankruptcy Clerk's Office: Telephone number: Hours Open:	For the Court: Clerk of the Bankruptcy Court: Date:

EXPLANATIONS

FORM B9D (9/97)

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor listed on the front side, and an order for relief has been entered.
Creditors May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor.
Liquidation of the Debtor's Property and Payment of Creditors' Claims	The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you must file a Proof of Claim, as described above.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
—Refer To Other Side For Important Deadlines and Notices—	

**INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 9D
NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER
7 OF THE BANKRUPTCY CODE, MEETING OF
CREDITORS, AND DEADLINES**

(Corporation/Partnership Asset Case)

I. INTRODUCTION

Official Form 9D is used for a corporation or partnership in an asset chapter 7 case. An asset case is one in which, after administrative expenses are paid, there will be funds available to distribute to unsecured creditors.

II. APPLICABLE LAW AND RULES

Bankruptcy Rule 2002(a) requires the bankruptcy clerk (or some other person as the court may direct) to give the debtor, the trustee, all creditors and indenture trustees notice of the meeting of creditors. Creditors and other parties in interest are entitled to "not less than 20 days" notice of the meeting. *Id.*

Information on bankruptcy and the bankruptcy process is given on the back of the form.

III. DIRECTIONS

1. United States Bankruptcy Court

The preparer should identify the Judicial District in which the petition has been filed, for example, "Eastern District of California."

2. Date Case Filed (or Converted)

The date the bankruptcy case was filed should be placed in the space provided at the top of the form. If the case has been converted from another chapter to chapter 7, the date and chapter under which the case was originally filed should be included as well as the date that the order or notice of conversion was filed.

3. Debtor's Name and Address

The preparer should place the debtor's name and address (including zip code) in the box provided.

4. Case Number

The preparer should place the bankruptcy case number in the box provided.

5. Tax Identification Numbers

The preparer should place the debtor's federal tax identification numbers in the space provided.

6. Name and Address of Attorney for Debtor

The preparer should insert the name and address of the attorney or law firm representing the debtor. If a law firm is representing the debtor, the preparer should also include the name of the individual attorney who actually is handling the case. (Any name inserted here should be the same as that of the attorney who signs the bankruptcy petition.) The telephone number of the debtor's attorney should be inserted in the space provided.

7. Name and Address of Trustee

The preparer should insert the name, address, and telephone number of the chapter 7 trustee here.

8. Meeting of Creditors

The preparer should insert the date and time for the meeting of creditors, as well as the address at which the meeting will be held.

9. Deadlines to File a Proof of Claim

This section includes two deadlines. The deadlines for filing a proof of claim for a governmental unit and for all other creditors should be inserted in the spaces provided.

10. Address of the Bankruptcy Clerk's Office

The address and telephone number of the bankruptcy clerk's office should appear in the space provided at the bottom left corner of the form. The hours the clerk's office is open should be placed in the space provided.

11. For the Court

The clerk's name and the date of the notice should be inserted in the space provided on the bottom right corner of the form.

FORM B9E (Chapter 11 Individual or Joint Debtor Case) (9/97)

UNITED STATES BANKRUPTCY COURT		District of _____
Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines		
[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date).] or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 11 on _____]		
You may be a creditor of the debtor. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.		
See Reverse Side For Important Explanations.		
Debtor(s) (name(s) and address):	Case Number: _____ Social Security/Taxpayer ID Nos.: _____	
Attorney for Debtor(s) (name and address):	Telephone number: _____	
Meeting of Creditors: Date: _____ Time: () A.M. / () P.M.		
Deadlines: Papers must be <i>received</i> by the bankruptcy clerk's office by the following deadlines: Deadline to File a Proof of Claim: Notice of deadline will be sent at a later time. Deadline to File a Complaint to Determine Dischargeability of Certain Debts: Deadline to File a Complaint Objecting to Discharge of the Debtor: First date set for hearing on confirmation of plan Notice of that date will be sent at a later time. Deadline to Object to Exemptions: Thirty (30) days after the conclusion of the meeting of creditors		
Creditors May Not Take Certain Actions: The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.		
Address of the Bankruptcy Clerk's Office: _____ _____ _____ _____ _____	For the Court: _____ Clerk of the Bankruptcy Court _____ _____ _____	

EXPLANATIONS

FORM B9E (9/97)

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Creditors May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all or if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim against the debtor in the bankruptcy case. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice.
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 1141(d)(3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
—Refer To Other Side For Important Deadlines and Notices—	

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 9E**NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 11 OF THE
BANKRUPTCY CODE, MEETING OF CREDITORS, AND DEADLINES****(Individual or Joint Debtor Case)****I. INTRODUCTION**

Official Form 9E is used for an individual debtor or joint debtors (husband and wife only) in a chapter 11 case.

II. APPLICABLE LAW AND RULES

Bankruptcy Rule 2002(a) requires the bankruptcy clerk (or some other person as the court may direct) to give the debtor, the trustee, all creditors and indenture trustees notice of the meeting of creditors. Creditors and other parties in interest are entitled to "not less than 20 days" notice of the meeting. *Id.*

Information on bankruptcy and the bankruptcy process is given on the back of the form.

III. DIRECTIONS**1. United States Bankruptcy Court**

The preparer should identify the Judicial District in which the petition has been filed, for example, "Eastern District of California."

2. Date Case Filed (or Converted)

The date the bankruptcy case was filed should be placed in the space provided at the top of the form. If the case has been converted from another chapter to chapter 11, the date and chapter under which the case was originally filed should be included as well as the date that the order or notice of conversion was filed.

3. Debtor's Name and Address

The preparer should place the debtor's name and address (including zip code) in the box provided. In the case of joint debtors, both debtors' names and address(es) should be placed in this space. Include all names used by the debtor or joint debtors within the last six years.

4. Case Number

The preparer should place the bankruptcy case number in the box provided.

5. Social Security/Tax Identification Numbers

The preparer should place the debtor's Social Security number in the space provided. In the case of joint debtors, both debtors' Social Security numbers should be placed in this space. Include all federal tax identification numbers used by the debtor or joint debtors.

6. Name and Address of Attorney for Debtor

The preparer should insert the name and address of the attorney or law firm representing the debtor. If a law firm is representing the debtor, the preparer should also include the name of the individual attorney who actually is handling the case. (Any name inserted here should be the same as that of the attorney who signs the bankruptcy petition.) If the debtor does not have an attorney, the preparer should place a "N/A" in the space provided.

7. Telephone Number of Attorney for Debtor

The telephone number of the debtor's attorney should be inserted in the space provided. (If the debtor is not represented by an attorney, the debtor's telephone number should NOT be inserted.)

8. Meeting of Creditors

The preparer should insert the date and time for the meeting of creditors, as well as the address at which the meeting will be held.

9. Deadlines

This section includes information on several deadlines. The date of the last day for filing a complaint to determine the dischargeability of certain types of debts should be placed in the space indicated. The other deadlines will be set later.

10. Address of the Bankruptcy Clerk's Office

The address and telephone number of the bankruptcy clerk's office should appear in the space provided at the bottom left corner of the form. The hours the clerk's office is open should be placed in the space provided.

11. For the Court

The clerk's name and the date of the notice should be inserted in the space provided on the bottom right corner of the form.

FORM 89E (ALT.) (Chapter 11 Individual or Joint Debtor Case) (9/97)

UNITED STATES BANKRUPTCY COURT		District of _____
Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines		
<p>[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date).] or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 11 on _____.]</p> <p>You may be a creditor of the debtor. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.</p> <p>NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.</p>		
See Reverse Side For Important Explanations		
Debtor(s) (name(s) and address): Attorney for Debtor(s) (name and address): 	Case Number: Social Security/Taxpayer ID No.: Telephone number: 	
Meeting of Creditors: Date: _____ Time: _____ Location: _____		
Deadlines: <u>Papers must be received by the bankruptcy clerk's office by the following deadlines:</u> Deadline to File a Proof of Claim: For all creditors (except a governmental unit): _____ For a governmental unit: _____ Deadline to File a Complaint to Determine Dischargeability of Certain Debts: _____ Deadline to File a Complaint Objecting to Discharge of the Debtor: <i>First date set for hearing on confirmation of plan</i> Notice of that date will be sent at a later time. Deadline to Object to Exemptions: Thirty (30) days after the conclusion of the meeting of creditors.		
Creditors May Not Take Certain Actions: The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.		
Address of the Bankruptcy Clerk's Office: Telephone number: Hours Open: _____	For the Court: Clerk of the Bankruptcy Court: _____	

EXPLANATIONS

FORM B9E (ALT.) (9/97)

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Creditors May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all or if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, or you might not be paid any money on your claim against the debtor in the bankruptcy case.
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 1141(d)(3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
—Refer To Other Side For Important Deadlines and Notices—	

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 9E(ALT.)
NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 11 OF THE
BANKRUPTCY CODE, MEETING OF CREDITORS, AND DEADLINES
(Individual or Joint Debtor Case)

I. INTRODUCTION

Official Form 9E(ALT.) is used for an individual debtor or joint debtors (husband and wife only) in a chapter 11 case. Alternative versions of Form 9E are provided for the convenience of districts that routinely set a deadline for filing claims in a chapter 11 case. If no deadline is set in a particular case, the preparer may use Form 9E or the alternate form with the sentence, "If the court sets a deadline, creditors will be notified."

II. APPLICABLE LAW AND RULES

Bankruptcy Rule 2002(a) requires the bankruptcy clerk (or some other person as the court may direct) to give the debtor, the trustee, all creditors and indenture trustees notice of the meeting of creditors. Creditors and other parties in interest are entitled to "not less than 20 days" notice of the meeting. *Id.*

Information on bankruptcy and the bankruptcy process is given on the back of the form.

III. DIRECTIONS

1. United States Bankruptcy Court

The preparer should identify the Judicial District in which the petition has been filed, for example, "Eastern District of California."

2. Date Case Filed (or Converted)

The date the bankruptcy case was filed should be placed in the space provided at the top of the form. If the case has been converted from another chapter to chapter 11, the date and chapter under which the case was originally filed should be included as well as the date that the order or notice of conversion was filed.

3. Debtor's Name and Address

The preparer should place the debtor's name and address (including zip code) in the box provided. In the case of joint debtors, both debtors' names and address(es) should be placed in this space. Include all names used by the debtor or joint debtors within the last six years.

4. Case Number

The preparer should place the bankruptcy case number in the box provided.

5. Social Security/Tax Identification Numbers

The preparer should place the debtor's Social Security number in the space provided. In the case of joint debtors, both debtors' Social Security numbers should be placed in this space. Include all federal tax identification numbers used by the debtor or joint debtors.

6. Name and Address of Attorney for Debtor

The preparer should insert the name and address of the attorney or law firm representing the debtor. If a law firm is representing the debtor, the preparer should also include the name of the individual attorney who actually is handling the case. (Any name inserted here should be the same as that of the attorney who signs the

bankruptcy petition.) If the debtor does not have an attorney, the preparer should place a "N/A" in the space provided.

7. Telephone Number of Attorney for Debtor

The telephone number of the debtor's attorney should be inserted in the space provided. (If the debtor is not represented by an attorney, the debtor's telephone number should NOT be inserted.)

8. Meeting of Creditors

The preparer should insert the date and time for the meeting of creditors, as well as the address at which the meeting will be held.

9. Deadlines

This section includes information on several deadlines. The deadlines for filing a proof of claim for a governmental unit and for all other creditors should be inserted in the spaces provided. The date of the last day for filing a complaint to determine the dischargeability of certain types of debts should be placed in the space indicated. The other deadlines will be set later.

10. Address of the Bankruptcy Clerk's Office

The address and telephone number of the bankruptcy clerk's office should appear in the space provided at the bottom left corner of the form. The hours the clerk's office is open should be placed in the space provided.

11. For the Court

The clerk's name and the date of the notice should be inserted in the space provided on the bottom right corner of the form.

FORM B9F (Chapter 11 Corporation/Partnership Asset Case) (9/97)

UNITED STATES BANKRUPTCY COURT		District of _____
Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines		
<p>[A chapter 11 bankruptcy case concerning the debtor [corporation] <i>or</i> [partnership] listed below was filed on _____ (date).] <i>or</i> [A bankruptcy case concerning the debtor [corporation] <i>or</i> [partnership] listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 11.]</p> <p>You may be a creditor of the debtor. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.</p>		
See Reverse Side For Important Explanations.		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">Debtor (name(s) and address):</div> <div style="width: 55%; border-bottom: 1px solid black;">Case Number:</div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"></div> <div style="width: 55%; border-bottom: 1px solid black;">Taxpayer ID Nos.:</div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%; border-bottom: 1px solid black;">Attorney for Debtor (name and address):</div> <div style="width: 55%; border-bottom: 1px solid black;">Telephone number:</div> </div>		
Meeting of Creditors:		
Date: _____	Time: () A.M. () P.M.	Location: _____
Deadline to File a Proof of Claim		
Proof of Claim must be <i>received</i> by the bankruptcy clerk's office by the following deadline: Notice of deadline will be sent at a later time.		
Creditors May Not Take Certain Actions:		
The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.		
Address of the Bankruptcy Clerk's Office: Telephone number: Hours Open:	<div style="text-align: center;">For the Court:</div> <div style="border-bottom: 1px solid black; height: 1.2em; margin: 5px auto; width: 80%;"></div> Clerk of the Bankruptcy Court:	

EXPLANATIONS

FORM B9F (9/97)

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Creditors May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment, taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all or if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim against the debtor in the bankruptcy case. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice.
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
—Refer To Other Side For Important Deadlines and Notices—	

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 9F**NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 11 OF THE
BANKRUPTCY CODE, MEETING OF CREDITORS, AND DEADLINES****(Corporation/Partnership Case)****I. INTRODUCTION**

Official Form 9F is used for a corporation or partnership in a chapter 11 case.

II. APPLICABLE LAW AND RULES

Bankruptcy Rule 2002(a) requires the bankruptcy clerk (or some other person as the court may direct) to give the debtor, the trustee, all creditors and indenture trustees notice of the meeting of creditors. Creditors and other parties in interest are entitled to “not less than 20 days” notice of the meeting. *Id.*

Information on bankruptcy and the bankruptcy process is given on the back of the form.

III. DIRECTIONS**1. United States Bankruptcy Court**

The preparer should identify the Judicial District in which the petition has been filed, for example, “Eastern District of California.”

2. Date Case Filed (or Converted)

The date the bankruptcy case was filed should be placed in the space provided at the top of the form. If the case has been converted from another chapter to chapter 11, the date and chapter under which the case was originally filed should be included as well as the date that the order or notice of conversion was filed.

3. Debtor’s Name and Address

The preparer should place the debtor’s name and address (including zip code) in the box provided.

4. Case Number

The preparer should place the bankruptcy case number in the box provided.

5. Tax Identification Numbers

The preparer should place the debtor’s federal tax identification numbers in the space provided.

6. Name and Address of Attorney for Debtor

The preparer should insert the name and address of the attorney or law firm representing the debtor. If a law firm is representing the debtor, the preparer should also include the name of the individual attorney who actually is handling the case. (Any name inserted here should be the same as that of the attorney who signs the bankruptcy petition.)

7. Telephone Number of Attorney for Debtor

The telephone number of the debtor’s attorney should be inserted in the space provided.

8. Meeting of Creditors

The preparer should insert the date and time for the meeting of creditors, as well as the address at which the meeting will be held.

9. Deadline to File a Proof of Claim

The deadline for filing a proof of claim will be set later.

10. Address of the Bankruptcy Clerk's Office

The address and telephone number of the bankruptcy clerk's office should appear in the space provided at the bottom left corner of the form. The hours the clerk's office is open should be placed in the space provided.

11. For the Court

The clerk's name and the date of the notice should be inserted in the space provided on the bottom right corner of the form.

FORM B9F (ALT.) (Chapter 11 Corporation/Partnership Case) (9/97)

UNITED STATES BANKRUPTCY COURT _____ District of _____	
Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines	
<p>[A chapter 11 bankruptcy case concerning the debtor [corporation] <i>or</i> [partnership] listed below was filed on _____ (date).] <i>or</i> [A bankruptcy case concerning the debtor [corporation] <i>or</i> [partnership] listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 11 on _____.]</p> <p>You may be a creditor of the debtor. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.</p>	
See Reverse Side For Important Explanations	
Debtor (name(s) and address):	Case Number
	Taxpayer ID Nos.
Attorney for Debtor (name and address)	Telephone number:
Meeting of Creditors:	
Date / /	Time () A.M. () P.M.
Location:	
Deadlines to File a Proof of Claim	
Proof of Claim must be <u>received</u> by the bankruptcy clerk's office by the following deadline.	
For all creditors (except a governmental unit)	For a governmental unit:
Creditors May Not Take Certain Actions:	
The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.	
Address of the Bankruptcy Clerk's Office:	For the Court:
	Clerk of the Bankruptcy Court
Telephone number:	
Hours Open:	Date:

EXPLANATIONS

FORM 89F (Alt.) (9/97)

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Creditors May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all <i>or</i> if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, or you might not be paid any money on your claim against the debtor in the bankruptcy case.
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
—Refer To Other Side For Important Deadlines and Notices—	

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 9F(ALT.)**NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 11 OF THE
BANKRUPTCY CODE, MEETING OF CREDITORS, AND DEADLINES****(Corporation/Partnership Case)****I. INTRODUCTION**

Official Form 9F(ALT.) is used for a corporation or partnership in a chapter 11 case. Alternative versions of Form 9F are provided for the convenience of districts that routinely set a deadline for filing claims in a chapter 11 case. If no deadline is set in a particular case, the preparer may use Form 9F or the alternate form with the sentence, "If the court sets a deadline, creditors will be notified."

II. APPLICABLE LAW AND RULES

Bankruptcy Rule 2002(a) requires the bankruptcy clerk (or some other person as the court may direct) to give the debtor, the trustee, all creditors and indenture trustees notice of the meeting of creditors. Creditors and other parties in interest are entitled to "not less than 20 days" notice of the meeting. *Id.*

Information on bankruptcy and the bankruptcy process given on the back of the form.

III. DIRECTIONS**1. United States Bankruptcy Court**

The preparer should identify the Judicial District in which the petition has been filed, for example, "Eastern District of California."

2. Date Case Filed (or Converted)

The date the bankruptcy case was filed should be placed in the space provided at the top of the form. If the case has been converted from another chapter to chapter 11, the date and chapter under which the case was originally filed should be included as well as the date that the order or notice of conversion was filed.

3. Debtors Name and Address

The preparer should place the debtor's name and address (including zip code) in the box provided.

4. Case Number

The preparer should place the bankruptcy case number in the box provided.

5. Tax Identification Numbers

The preparer should place the debtor's federal tax identification numbers in the space provided.

6. Name and Address of Attorney for Debtor

The preparer should insert the name and address of the attorney or law firm representing the debtor. If a law firm is representing the debtor, the preparer should also include the name of the individual attorney who actually is handling the case. (Any name inserted here should be the same as that of the attorney who signs the bankruptcy petition.)

7. Telephone Number of Attorney for Debtor

The telephone number of the debtor's attorney should be inserted in the space provided.

8. Meeting of Creditors

The preparer should insert the date and time for the meeting of creditors, as well as the address at which the meeting will be held.

9. Deadlines to File a Proof of Claim

The deadlines for filing a proof of claim for a governmental unit and for all other creditors should be inserted in the spaces provided.

10. Address of the Bankruptcy Clerk's Office

The address and telephone number of the bankruptcy clerk's office should appear in the space provided at the bottom left corner of the form. The hours the clerk's office is open should be placed in the space provided.

11. For the Court

The clerk's name and the date of the notice should be inserted in the space provided on the bottom right corner of the form.

FORM B9G (Chapter 12 Individual or Joint Debtor Family Farmer) (9/97)

UNITED STATES BANKRUPTCY COURT		District of _____
Notice of Chapter 12 Bankruptcy Case, Meeting of Creditors, & Deadlines		
[The debtor(s) listed below filed a chapter 12 bankruptcy case on _____ (date) [Page 1 of 1] or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 12 on _____.]		
You may be a creditor of the debtor. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.		
See Reverse Side For Important Explanations.		
Debtor(s) (name(s) and address): _____ Attorney for Debtor(s) (name and address): _____ Telephone number: _____	Social Security/Taxpayer ID Nos.: _____ Bankruptcy Trustee (name and address): _____ Telephone number: _____	
Meeting of Creditors: DATE: _____ TIME: _____ () P.M.		
Deadlines: Papers must be received by the bankruptcy clerk's office by the following deadlines:		
Deadline to File a Proof of Claim: For all creditors (except a governmental unit): _____ For a governmental unit: _____		
Deadline to File a Complaint to Determine Dischargeability of Certain Debts: _____		
Deadline to Object to Exemptions: Thirty (30) days after the conclusion of the meeting of creditors.		
Filing of Plan, Hearing on Confirmation of Plan [The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held: Date: _____ Time: _____ Location: _____ or [The debtor has filed a plan. The plan or a summary of the plan and notice of confirmation hearing will be sent separately.] or [The debtor has not filed a plan as of this date. You will be sent separate notice of the hearing on confirmation of the plan.]		
Creditors May Not Take Certain Actions:		
The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, the debtor's property, and certain codebtors. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.		
Address of the Bankruptcy Clerk's Office: _____ Telephone number: _____ Hours Open: _____	For the Court: Clerk of the Bankruptcy Court: _____	

EXPLANATIONS

FORM B9G (9/97)

Filing of Chapter 12 Bankruptcy Case	A bankruptcy case under chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] <i>or</i> [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] <i>or</i> [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.
Creditors May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
—Refer To Other Side For Important Deadlines and Notices—	

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 9G**NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 12 OF THE
BANKRUPTCY CODE, MEETING OF CREDITORS, AND DEADLINES****(Individual or Joint Debtor Family Farmer)****I. INTRODUCTION**

Official Form 9G is used for an individual or joint debtor (husband and wife) family farmer in a chapter 12 case. The phrase "family farmer" is defined in 11 U.S.C. § 101.

II. APPLICABLE LAW AND RULES

Bankruptcy Rule 2002(a) requires the bankruptcy clerk (or some other person as the court may direct) to give the debtor, the trustee, all creditors and indenture trustees notice of the meeting of creditors. Creditors and other parties in interest are entitled to "not less than 20 days" notice of the meeting. *Id.*

Information on bankruptcy and the bankruptcy process is given on the back of the form.

III. DIRECTIONS**1. United States Bankruptcy Court**

The preparer should identify the Judicial District in which the petition has been filed, for example, "Eastern District of California."

2. Date Case Filed (or Converted)

The date the bankruptcy case was filed should be placed in the space provided at the top of the form. If the case has been converted from another chapter to chapter 12, the date and chapter under which the case was originally filed should be included as well as the date that the order or notice of conversion was filed.

3. Debtor's Name and Address

The preparer should place the debtor's name and address (including zip code) in the box provided. In the case of joint debtors, both debtors' names and address(es) should be placed in this space. Include all names used by the debtor or joint debtors within the last six years.

4. Case Number

The preparer should place the bankruptcy case number in the box provided.

5. Social Security/Tax Identification Numbers

The preparer should place the debtor's Social Security number in the space provided. In the case of joint debtors, both debtors' Social Security numbers should be placed in this space. Include all federal tax identification numbers used by the debtor or joint debtors.

6. Name and Address of Attorney for Debtor

The preparer should insert the name and address of the attorney or law firm representing the debtor. If a law firm is representing the debtor, the preparer should also include the name of the individual attorney who actually is handling the case. (Any name inserted here should be the same as that of the attorney who signs the bankruptcy petition.) If the debtor does not have an attorney, the preparer should place a "N/A" in the space provided. The telephone number of the debtor's attorney

should be inserted in the space provided. (If the debtor is not represented by an attorney, the debtor's telephone number should NOT be inserted.)

7. Name and Address of Trustee

The preparer should insert the name, address, and telephone number of the chapter 12 trustee here.

8. Meeting of Creditors

The preparer should insert the date and time for the meeting of creditors, as well as the address at which the meeting will be held.

9. Deadlines

This section includes several deadlines. The deadlines for filing a proof of claim for a governmental unit and for all other creditors should be inserted in the spaces provided. The date of the last day for filing a complaint to determine the dischargeability of certain types of debts should be placed in the space indicated.

10. Filing of Plan, Hearing on Confirmation

The preparer should select the appropriate language on the status of the plan, i.e., whether a plan has been filed, whether a copy of the plan or a summary will be mailed with the notice, and whether a hearing on confirmation of the plan has been scheduled. If a plan has been filed and a confirmation hearing has been scheduled, include the date, time, and location for the hearing.

11. Address of the Bankruptcy Clerk's Office

The address and telephone number of the bankruptcy clerk's office should appear in the space provided at the bottom left corner of the form. The hours the clerk's office is open should be placed in the space provided.

12. For the Court

The clerk's name and the date of the notice should be inserted in the space provided on the bottom right corner of the form.

FORM B9H (Chapter 12 Corporation/Partnership Family Farmer) (5/97)

UNITED STATES BANKRUPTCY COURT _____ District of _____	
Notice of Chapter 12 Bankruptcy Case, Meeting of Creditors, & Deadlines	
[The debtor [corporation] or [partnership] listed below filed a chapter 12 bankruptcy case on _____ (date)] or [A bankruptcy case concerning the debtor [corporation] or [partnership] listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 12 on _____.]	
You may be a creditor of the debtor. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.	
See Reverse Side For Important Explanations.	
Debtor (name(s) and address): Attorney for Debtor (name and address): Telephone number: _____	Case Number: _____ Social Security/Taxpayer ID Nos.: _____ Bankruptcy Trustee (name and address): Telephone number: _____
Meeting of Creditors:	
Date: _____ Time: () A.M. Location: _____ () P.M.	
Deadlines:	
<u>Papers must be received by the bankruptcy clerk's office by the following deadlines:</u> Deadline to File a Proof of Claim: For all creditors (except a governmental unit) _____ For a governmental unit: _____ Deadline to File a Complaint to Determine Dischargeability of Certain Debts: _____	
Filing of Plan, Hearing on Confirmation of Plan	
[The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held Date: _____ Time: _____ Location: _____] or [The debtor has filed a plan. The plan or a summary of the plan and notice of confirmation hearing will be sent separately.] or [The debtor has not filed a plan as of this date. You will be sent separate notice of the hearing on confirmation of the plan.]	
Creditors May Not Take Certain Actions:	
The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, the debtor's property, and certain codebtors. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.	
Address of the Bankruptcy Clerk's Office: Telephone number: _____ Hours Open: _____	For the Court: Clerk of the Bankruptcy Court: _____ Date: _____

EXPLANATIONS

FORM B9H (9/97)

Filing of Chapter 12 Bankruptcy Case	A bankruptcy case under chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] <i>or</i> [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] <i>or</i> [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.
Creditors May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor, repossessing the debtor's property; and starting or continuing lawsuits or foreclosures.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
—Refer To Other Side For Important Deadlines and Notices—	

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 9H
NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 12 OF THE
BANKRUPTCY CODE, MEETING OF CREDITORS, AND DEADLINES

(Corporation/Partnership Family Farmer)

I. INTRODUCTION

Official Form 9H is used for a corporation or partnership family farmer in a chapter 12 case. The phrase "family farmer" is defined in 11 U.S.C. § 101.

II. APPLICABLE LAW AND RULES

Bankruptcy Rule 2002(a) requires the bankruptcy clerk (or some other person as the court may direct) to give the debtor, the trustee, all creditors and indenture trustees notice of the meeting of creditors. Creditors and other parties in interest are entitled to "not less than 20 days" notice of the meeting. *Id.*

Information on bankruptcy and the bankruptcy process is given on the back of the form.

III. DIRECTIONS

1. United States Bankruptcy Court

The preparer should identify the Judicial District in which the petition has been filed, for example, "Eastern District of California."

2. Date Case Filed (or Converted)

The date the bankruptcy case was filed should be placed in the space provided at the top of the form. If the case has been converted from another chapter to chapter 12, the date and chapter under which the case was originally filed should be included as well as the date that the order or notice of conversion was filed.

3. Debtor's Name and Address

The preparer should place the debtor's name and address (including zip code) in the box provided.

4. Case Number

The preparer should place the bankruptcy case number in the box provided.

5. Social Security/Tax Identification Numbers

The preparer should place the debtor's federal tax identification number in the space provided.

6. Name and Address of Attorney for Debtor

The preparer should insert the name and address of the attorney or law firm representing the debtor. If a law firm is representing the debtor, the preparer should also include the name of the individual attorney who actually is handling the case. (Any name inserted here should be the same as that of the attorney who signs the bankruptcy petition.)

7. Name and Address of Trustee

The preparer should insert the name, address, and telephone number of the chapter 12 trustee here.

8. Meeting of Creditors

The preparer should insert the date and time for the meeting of creditors, as well as the address at which the meeting will be held.

9. Deadlines

This section includes several deadlines. The deadlines for filing a proof of claim for a governmental unit and for all other creditors should be inserted in the spaces provided. The date of the last day for filing a complaint to determine the dischargeability of certain types of debts should be placed in the space indicated.

10. Filing of Plan, Hearing on Confirmation

The preparer should select the appropriate language on the status of the plan, i.e., whether a plan has been filed, whether a copy of the plan or a summary will be mailed with the notice, and whether a hearing on confirmation of the plan has been scheduled. If a plan has been filed and a confirmation hearing has been scheduled, include the date, time, and location for the hearing.

11. Address of the Bankruptcy Clerk's Office

The address and telephone number of the bankruptcy clerk's office should appear in the space provided at the bottom left corner of the form. The hours the clerk's office is open should be placed in the space provided.

12. For the Court

The clerk's name and the date of the notice should be inserted in the space provided on the bottom right corner of the form.

FORM B91 (Chapter 13 Case) (9/97)

UNITED STATES BANKRUPTCY COURT		District of	
Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines			
[The debtor(s) listed below filed a chapter 13 bankruptcy case on (date).] or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter on (date) and was converted to a case under chapter 13 on]			
You may be a creditor of the debtor. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.			
See Reverse Side For Important Explanations.			
Debtor(s) (name(s) and address)		Case Number	
		Social Security/Taxpayer ID Nos.:	
Attorney for Debtor(s) (name and address):		Bankruptcy Trustee (name and address):	
Telephone number:		Telephone number:	
Meeting of Creditors:			
Date: / /		Time: () A.M. () P.M. Location:	
Deadlines:			
Papers must be received by the bankruptcy clerk's office by the following deadlines:			
Deadline to File a Proof of Claim:			
For all creditors (except a governmental unit).		For a governmental unit:	
Deadline to Object to Exemptions:			
Thirty (30) days after the conclusion of the meeting of creditors			
Filing of Plan, Hearing on Confirmation of Plan			
[The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held. Date Time Location] or [The debtor has filed a plan. The plan or a summary of the plan and notice of confirmation hearing will be sent separately.] or [The debtor has not filed a plan as of this date. You will be sent separate notice of the hearing on confirmation of the plan.]			
Creditors May Not Take Certain Actions:			
The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, debtor's property, and certain codebtors. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.			
Address of the Bankruptcy Clerk's Office:		For the Court:	
Telephone number:		Clerk of the Bankruptcy Court:	
Hours Open:		Date:	

EXPLANATIONS

FORM 791 (9/97)

Filing of Chapter 13 Bankruptcy Case	A bankruptcy case under chapter 13 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specified amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] <i>or</i> [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] <i>or</i> (you will be sent notice of the confirmation hearing). The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.
Creditors May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1301. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
—Refer To Other Side For Important Deadlines and Notices—	

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 9I**NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 13 OF THE
BANKRUPTCY CODE, MEETING OF CREDITORS, AND DEADLINES****I. INTRODUCTION**

Official Form 9I is used for a chapter 13 case.

II. APPLICABLE LAW AND RULES

Bankruptcy Rule 2002(a) requires the bankruptcy clerk (or some other person as the court may direct) to give the debtor, the trustee, all creditors and indenture trustees notice of the meeting of creditors. Creditors and other parties in interest are entitled to "not less than 20 days" notice of the meeting. *Id.*

Information on bankruptcy and the bankruptcy process is given on the back of the form.

III. DIRECTIONS**1. United States Bankruptcy Court**

The preparer should identify the Judicial District in which the petition has been filed, for example, "Eastern District of California."

2. Date Case Filed (or Converted)

The date the bankruptcy case was filed should be placed in the space provided at the top of the form. If the case has been converted from another chapter to chapter 13, the date and chapter under which the case was originally filed should be included as well as the date that the order or notice of conversion was filed.

3. Debtor's Name and Address

The preparer should place the debtor's name and address (including zip code) in the box provided. In the case of joint debtors, both debtors' names and address(es) should be placed in this space. Include all names used by the debtor or joint debtors within the last six years.

4. Case Number

The preparer should place the bankruptcy case number in the box provided.

5. Social Security/Tax Identification Numbers

The preparer should place the debtor's Social Security number in the space provided. In the case of joint debtors, both debtors' Social Security numbers should be placed in this space. Include all federal tax identification numbers used by the debtor or joint debtors.

6. Name and Address of Attorney for Debtor

The preparer should insert the name and address of the attorney or law firm representing the debtor. If a law firm is representing the debtor, the preparer should also include the name of the individual attorney who actually is handling the case. (Any name inserted here should be the same as that of the attorney who signs the bankruptcy petition.) If the debtor does not have an attorney, the preparer should place a "N/A" in the space provided. The telephone number of the debtors attorney should be inserted in the space provided. (If the debtor is not represented by an attorney, the debtor's telephone number should NOT be inserted.)

7. Name and Address of Trustee

The preparer should insert the name, address, and telephone number of the chapter 13 trustee here. The telephone number of the trustee should be inserted in the space provided.

8. Meeting of Creditors

The preparer should insert the date and time for the meeting of creditors, as well as the address at which the meeting will be held.

9. Deadlines

The deadlines for filing a proof of claim for a governmental unit and for all other creditors should be inserted in the spaces provided.

10. Filing of Plan, Hearing on Confirmation

The preparer should select the appropriate language on the status of the plan, i.e., whether a plan has been filed, whether a copy of the plan or a summary will be mailed with the notice, and whether a hearing on confirmation of the plan has been scheduled. If a plan has been filed and a confirmation hearing has been scheduled, include the date, time, and location for the hearing.

11. Address of the Bankruptcy Clerk's Office

The address and telephone number of the bankruptcy clerk's office should appear in the space provided at the bottom left corner of the form. The hours the clerk's office is open should be placed in the space provided.

12. For the Court

The clerk's name and the date of the notice should be inserted in the space provided on the bottom right corner of the form.

Advisory Committee Note

The form has been redesigned to facilitate electronic generation of notice to creditors concerning the filing of the petition, the meeting of creditors, and important deadlines in the case. Adoption of a box format, with significant dates highlighted, is intended to assist creditors who may be unfamiliar with bankruptcy cases to understand the data provided. Nine variations of the form, designated 9A through 9I, have been created to meet the specialized notice requirements for chapters 7, 11, 12, and 13, asset and no-asset cases, and the various types of debtors.

Advisory Committee Note to 1992 Amendment

Forms 9B, 9D, 9F, and 9H are amended to make a technical correction in the reference to Rule 9001(5). Form 9H also contains a technical correction deleting the reference to a complaint objecting to discharge of the debtor.

Advisory Committee Note to 1993 Amendment

The title page of the form has been amended to conform to the headings used on Forms 9A–9I. Alternate versions of Form 9E and Form 9F have been added for the convenience of districts that routinely set a deadline for filing claims in a chapter 11 case. When a creditor receives the alternate form in a case, the box labeled “Filing Claims” will contain information about the bar date as follows: “Deadline for filing a claim: *(date)*.” If no deadline is set in a particular case, either the court will use Form 9E or Form 9F, as appropriate, or the alternate form will be used with the following sentence appearing in the box labeled “Filing Claims”: “When the court sets a deadline for filing claims, creditors will be notified.”

Advisory Committee Note to 1995 Amendment

The form is amended to provide notice of the claims filing period provided to “a governmental unit” by section 502(b)(9) of the Code as amended by the Bankruptcy Reform Act of 1994. A court that routinely sets a deadline for filing proofs of claim at the outset of chapter 11 cases and, accordingly, uses Form 9E(Alt.) or Form 9F(Alt.) retains the option in any case in which no deadlines actually are set to substitute a message stating that creditors will be notified if the court fixes a deadline.

The form also is amended to add, in the paragraph labeled “Discharge of Debts,” a reference to dischargeability actions under section 523(a)(15) of the Code, which was added by the 1994 Act.

Advisory Committee Note to 1997 Amendment

Forms 9A–9I (and the alternate versions of Forms 9E and 9F) have been amended, redesigned, and rewritten. Minor conforming changes have been made to respond to amendments made in the Bankruptcy Reform Act of 1994: the longer claims filing period for governmental units in section 502(b)(9) of the Code (see Forms 9C, 9D, 9E(Alt.), 9F(Alt.), 9G, 9H, and 9I); and a reference to dischargeability actions under section 523(a)(15) (see Forms 9A, 9C, 9E, and 9E(Alt.), 9G, and 9H). All of the forms have been substantially revised to make them easier to read and understand. The titles have been simplified. Recipients are told why they are receiving the notice. Explanations are provided on the back of the form and are set in larger type. Plain English is used. Deadlines are highlighted on the front of the form. Recipi-

ents are told that papers must be received by the bankruptcy clerk's office by the applicable deadline. The box for the trustee has been deleted from the chapter 11 notices (Forms 9E and 9F and the alternates). Various alternatives are set out in brackets in many of the forms, permitting each bankruptcy clerk's office to tailor the forms even more precisely to fit the needs of a particular case. The court may use blank spaces on the form to include additional information applicable to the particular district.

Form 10

PROOF OF CLAIM

OFFICIAL FORM NO. 10 (Rev. 11-1-1983)

United States Bankruptcy Court		District of _____	PROOF OF CLAIM
Name of Debtor		Case Number	
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.			
Name of creditor (The person or other entity to whom the claim is due. If an entity, give its name and type of entity.)		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copies of notice giving particulars.	
Name and address where notices should be sent:		<input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Telephone number:		This space is for Court Use Only	
Account or other number by which creditor identifies debtor		<input type="checkbox"/> Check here if this claim <input type="checkbox"/> replaces <input type="checkbox"/> amends a previously filed claim, dated: ____-____-____	
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____		<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (Fill out below) Your SS# _____ Unpaid compensation for services performed from ____ (date) ____ to ____ (date) ____	
2. Date debt was incurred:		3. If court judgment, date obtained:	
4. Total Amount of Claim at Time Case Filed \$ _____ If all or part of your claim is secured or entitled to priority, also complete item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.			
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any \$ _____		6. Unsecured Priority Claim. <input type="checkbox"/> Check this box if you have an unsecured priority claim. Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,300)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$1,950* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) - _____. *Amounts are subject to adjustment on 3-1-98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.	
7. CREDITS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. 8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. 9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.			This Space Is for Court Use Only
Date:	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):		
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both, or any combination thereof.			

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In particular types of cases or circumstances, such as bankruptcy cases that are not filed voluntarily by a debtor, there may be exceptions to these general rules.

----- DEFINITIONS -----

Debtor

The person, corporation, or other entity that has filed a bankruptcy case is called the debtor.

Creditor

A creditor is any person, corporation, or other entity to whom the debtor owes a debt to the date that the bankruptcy case was filed.

Proof of Claim

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

Secured Claim

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim*.)

Unsecured Claim

If a claim is not secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

Unsecured Priority Claim

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority claims*.

Items to be completed in Proof of Claim form (if not already filled in)

Court, Name of Debtor, and Case Number

Fill in the name of the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the court, all of this information is near the top of the notice.

Information about Creditor

Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form.

1. Basis for Claim

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

2. Date Debt Incurred

Fill in the date when the debt first was owed by the debtor.

3. Court Judgments

If you have a court judgment for this debt, state the date the court entered the judgment.

4. Total Amount of Claim at Time Case Filed

Fill in the total amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

5. Secured Claim

Check the appropriate place if the claim is a secured claim. You must state the type of value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured. (See DEFINITIONS, above.)

6. Unsecured Priority Claim

Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority. (See DEFINITIONS, above.) A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

7. Credits

By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

8. Supporting Documents

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

**INSTRUCTIONS FOR COMPLETING OFFICIAL
FORM 10, PROOF OF CLAIM****I. INTRODUCTION**

The principal response of a creditor to the filing of a bankruptcy case is to file a proof of claim (Official Form 10). Specifically, the proof of claim is the creditor's response to the information provided by the debtor in the debtor's schedules. The proof of claim identifies the claimant, states the amount the creditor believes is owed by the debtor, and states the status the creditor believes the claim should have in the case. Documents to support the claim are attached by the creditor to the proof of claim form and filed with it. Such supporting documents provide evidence to substantiate the amount stated in the proof of claim. Creditors may obtain proof of claim forms from the bankruptcy clerk's office.

II. APPLICABLE LAW AND RULES

Section 501 of the Bankruptcy Code authorizes the filing of proofs of claim and proofs of interest. 11 U.S.C. § 501. Rule 5005(a) of the Federal Rules of Bankruptcy Procedure (referred to as "Bankruptcy Rule" or "Fed. R. Bankr. P.") requires proofs of claim to be filed with the bankruptcy clerk in the district where the bankruptcy case is pending.

A proof of claim is a written statement that sets forth a creditor's claim and must conform substantially to the Official Form. Fed. R. Bankr. P. 3001(a). If a claim is based on a written document, the creditor should include a copy of the document with the proof of claim when filing it with the court. Fed. R. Bankr. P. 3001(c). In addition, if a creditor is claiming a security interest in property of the debtor, the creditor should include evidence of perfection of the security interest with the proof of claim. Fed. R. Bankr. P. 3001(d). Examples of evidence of perfection of a lien include a copy of a deed of trust, mortgage, Uniform Commercial Code financing statement (UCC-1), or court judgment which reflects that the document was filed with the appropriate government agency.

A proof of claim filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). A proof of claim is deemed "allowed," meaning that it is eligible for payment, unless a party in interest objects. 11 U.S.C. § 502(a). Objections to proofs of claim are governed by Bankruptcy Rule 3007. Moreover, transferors and transferees of claims should refer to and carefully read Bankruptcy Rule 3001(e).

Who May File:

A creditor or an indenture trustee may file a proof of claim. 11 U.S.C. § 501(a), Fed. R. Bankr. P. 3001(b), 3003(c)(1). A creditor is anyone to whom the debtor owes money or property. Most claims are filed by creditors.

An indenture trustee holds a security interest in the debtor's business or property on behalf of others. Indenture trustees may file a claim on behalf of all known or unknown holders of the securities that constitute the trust.

An equity security holder is a holder of an "equitable interest," such as shares in a corporation or the interest of a limited partner in a limited partnership. An equity security holder may only file a proof of interest, not a proof of claim. 11 U.S.C. § 501(a). There is no official form for filing a proof of interest.

If a creditor neglects to file a proof of claim within the time stated in Bankruptcy Rule 3004, the debtor or the trustee may complete and file a proof of claim on behalf of the creditor to ensure that the debtor is discharged of all dischargeable debts and that

the trustee pays all creditors to the extent of the available assets. *See* 11 U.S.C. § 501(c); Fed. R. Bankr. P. 3004. A proof of claim filed by the creditor will supersede a proof of claim filed by the debtor or trustee. Fed. R. Bankr. P. 3004.

If a creditor neglects to file a proof of claim within the time permitted, an entity that is or may be liable with the debtor may file a proof of claim on behalf of the creditor. Fed. R. Bankr. P. 3005(a). A proof of claim filed by the creditor will supersede a proof of claim filed by an entity under Bankruptcy Rule 3005.

In chapter 9 and 11 cases, the schedule of liabilities, required to be filed by the debtor under 11 U.S.C. § 521(1), constitutes prima facie evidence of the validity and amount of the claims of creditors, unless the claims are scheduled as disputed, contingent, or unliquidated. Likewise, the list of equity security holders required to be filed by the debtor under Bankruptcy Rule 1007(a)(3), constitutes prima facie evidence of the validity and amount of the equity security interests. Thus, in such a case, it is not necessary for a creditor or equity security holder to file a proof of claim or interest, as long as the amount of the claim or interest is accurately listed in the debtor's schedules and is not listed as disputed, contingent, or unliquidated. Fed. R. Bankr. P. 3003(b)(1), (b)(2); 11 U.S.C. § 1111(a).

Who Must File:

In a chapter 7, 12, or 13 case, for an unsecured creditor's claim to be "allowed," meaning made eligible for payment, the creditor **must** file a proof of claim. Fed. R. Bankr. P. 3002(a). Some exceptions apply. For example, claims filed in a chapter 11, 12, or 13 case that later converts to a chapter 7 case do not need to be refiled. Fed. R. Bankr. P. 1019(3). Additionally, as stated above, a debtor trustee, guarantor, or codebtor may file on behalf of a creditor. Fed. R. Bankr. P. 3004, 3005.

In a chapter 9 or 11 case, any creditor or equity security holder whose claim or interest is not scheduled, or is scheduled as disputed, contingent, or unliquidated, **must** file a proof of claim or interest in order to be treated as a creditor for purposes of voting on a plan of reorganization and distribution. Fed. R. Bankr. P. 3003(c)(2). Section 1111(a) of the Bankruptcy Code states that in a chapter 11 case, a proof of claim or interest is deemed filed for any claim that appears in the schedules, unless that claim or interest is scheduled as disputed, contingent, or unliquidated. *See also* Fed. R. Bankr. P. 3003(b). These three categories are particularly important for the chapter 11 creditor in determining whether to file a proof of claim. 11 U.S.C. § 1111(a). It is the creditor's responsibility to review the schedules and ascertain how the debt is listed. Often a debtor will list a claim for an amount different than the creditor believes is owed. In such a case, the claim should be considered "disputed" and a proof of claim should be filed, even though the debtor may not realize a dispute exists.

Bankruptcy Rule 3003(c)(4) provides, in chapter 9 and 11 cases, that the proof of claim supersedes any scheduling of that claim. Thus, if the amounts or other information stated in the proof of claim conflict with those in the debtor's schedules but are adequately backed up by supporting documents, the information in the proof of claim supersedes the information in the debtor's schedules. In all cases, a proof of claim is deemed "allowed," meaning eligible for payment, unless a party in interest objects. 11 U.S.C. § 502(a). Proofs of claim are subject to objection under Bankruptcy Rule 3007.

Although it is not always necessary to file a proof of claim in a chapter 11 case, many creditors do so to avoid the burden of a possible mistake or misrepresentation in the schedule. Many cases that are filed under chapter 11 later are converted to liquidation proceedings under chapter 7. A creditor who has not filed an actual proof of claim while the case was under chapter 11 **must** file a proof of claim once the

conversion has occurred, and must do so within the time prescribed in Bankruptcy Rule 3002(c). Proofs of claim actually filed by creditors during the chapter 11 period of the case will carry over and continue to be valid in the chapter 7 proceeding.

Secured creditors who are fully “collateralized,” (the value of their lien on the debtor’s property is equal to or greater than the debt), are not required to file a proof of claim. The creditor retains the right to foreclose or repossess the collateral after the bankruptcy. If the creditor does not file a proof of claim and the claim turns out to be only partially collateralized, however, the creditor may lose the opportunity to collect the remaining portion of the debt.

Time To File:

In a chapter 7, 12, or 13 case a proof of claim must be filed within 90 days after the first date set for the meeting of creditors. There are six narrow exceptions to this deadline specified in Bankruptcy Rule 3002.

After the 90 days have expired in a chapter 7 case, further notices in the case usually will be mailed only to creditors whose claims have been filed and those who were awarded extensions. Fed. R. Bankr. P. 2002(h).

In a chapter 7 no-asset case, creditors may receive a notice of no distribution (or no dividend) if there are no assets in the estate from which a dividend can be paid to creditors. Most courts combine this notice with the notice of the meeting of creditors. The notice of no distribution may state that it is unnecessary to file claims and that, if assets become available for paying creditors, another notice will be sent with instructions to file claims. Fed. R. Bankr. P. 2002(e).

In a chapter 9 or 11 case, the court fixes and may extend the time within which proofs of claim may be filed. Fed. R. Bankr. P. 3003(c)(3). However, some courts have local rules fixing the same deadline for proofs of claim in chapter 11 cases as Bankruptcy Rule 3002 establishes for cases under chapters 7, 12, and 13. A creditor should read very carefully the notice announcing the filing of the case and the meeting of creditors, as it also may contain information on filing a proof of claim. If a filing deadline for proofs of claim is not set or “fixed” at the beginning of a case, a creditor should be on the alert for a later notice.

Definitions:

Debtor—The person, corporation, or other entity that has filed a bankruptcy case is called the debtor. See 11 U.S.C. § 101.

Creditor—A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed. See 11 U.S.C. § 101.

Proof of Claim—A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor’s claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

Setoff—A “setoff” is when all or a part of the debt owed by the debtor to the creditor is offset by a mutual debt the creditor owed to the debtor before the bankruptcy case was filed.

Secured Claim—A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property. Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a

court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim.

Unsecured Claim—If a claim is not a secured claim, it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

Unsecured Priority Claim—Certain types of unsecured claims are given priority by the Bankruptcy Code, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the Bankruptcy Code are classified as unsecured nonpriority claims.

Types of Unsecured Priority Claims:

(1) Not listed on this form but first on the priorities list are administrative expenses, fees, and charges incurred by the estate during the bankruptcy case. 11 U.S.C. § 507(a)(1). Those who are entitled to payment under this section are not deemed "creditors" in the bankruptcy. The bulk of administrative expense claims arise after the case is filed. Accordingly, the amounts incurred, and often the identity of many who eventually become claimants, are unknown at the time the schedules are filed. A person or entity having an unpaid claim for an administrative expense should file a request for payment under 11 U.S.C. § 503 rather than filing a proof of claim.

(2) The second priority is afforded to claims under 11 U.S.C. § 507(a)(2) of the Bankruptcy Code to the group frequently known as "involuntary gap" creditors. Involuntary gap creditors are those who hold claims which arise in an involuntary case during the "gap" between the commencement of the case, and the earlier of the appointment of a trustee or the order for relief. These claims are allowable under section 502(f) of the Bankruptcy Code.

(3) Section 507(a)(3) gives third priority to wages, salaries, and commissions, including vacation, sick leave, and severance pay, earned by employees of the debtor within 90 days before the date the petition was filed or the date the debtor ceased doing business, whichever is earlier. The maximum amount that any employee can claim under this priority is \$4,300. The remainder of the claim is a general, unsecured claim.

(4) Under section 507(a)(4) of the Bankruptcy Code, contributions to employee benefit plans have the same monetary restrictions as do wages, salaries, and commissions, limiting the claim to \$4,300 per employee. The contributions are those that were payable for services rendered within 180 days before the filing of the petition or the date the debtor ceased doing business, whichever occurs first.

(5) Section 507(a)(5) of the Bankruptcy Code provides priority for a farmer in the business of raising or producing grain against a debtor who operates grain storage facilities, as well as for a United States fisherman against a debtor who operates a fish storage or processing facility. Both types of claims must arise from the sale, conversion, or consignment of these commodities to the debtor, and the priority does not exceed \$4,300 per farmer or fisherman.

(6) Section 507(a)(6) of the Bankruptcy Code gives priority status to a claim by an individual who made a deposit with the debtor for the purchase of either property or services, and "lost the deposit," never having received the property or services in return for payment. Examples are deposits for furniture that was ordered but never delivered and prepaid "memberships" in gyms or health clubs. The deposit is money

owed for goods or services that have not been rendered. The maximum amount entitled to priority for such a claim is \$1,950 per individual.

(7) Section 507(a)(7) of the Bankruptcy Code gives priority status to claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in this section. Some restrictions apply to this priority, and creditors should read section 507(a)(7) carefully.

(8) Sections 507(a)(8) and 507(a)(9) of the Bankruptcy Code give priority status to claims for unpaid taxes and debts owed to federal, state, or local governments, and claims against certain defined debtors for commitments to the federal bank insurance companies, such as the FDIC.

(9) The amounts set out in sections 507(a)(3), 507(a)(4), 507(a)(5), and 507(a)(6) are subject to adjustment on April 1, 2001, and every three years thereafter.

III. DIRECTIONS

Detailed instructions for completing the proof of claim form are printed on the back of the form.

Creditors should read the instructions and complete the form carefully since the information that creditors provide on the form is used for a number of purposes, including the calculation of distributions to creditors. The clerk uses the information to update the creditor's mailing address and fulfill the clerk's noticing duties for transferred claims. The trustee uses the information to identify the creditor, ascertain whether duplicate or conflicting claims exist, and determine whether this claim amends or replaces an earlier filed claim.

The proof of claim form does not include a separate box for general unsecured claims. Creditors should enter the total amount of the claim at the time the bankruptcy case was filed in Box 4, the value of collateral which secures the claim in Box 5, and the unsecured priority portion of the claim in box 6. Definitions for secured claims, priority unsecured claims, and (general) unsecured claims are given on the back of the proof of claim form.

A complete list of unsecured priority claims is found in section 507 of the Bankruptcy Code. In addition, the types of priority claims are discussed earlier in this material on Form 10. Many types of priority claims are limited to certain dollar amounts, and a creditor can only claim priority up to these amounts.

If a claim is an "administrative expense" under section 507(a)(1), payment should not be requested on this form. A separate "Request for Payment of Administrative Expense" and documentation should be submitted pursuant to section 503 of the Bankruptcy Code. There is no national form for a "Request for Payment of Administrative Expense." Generally, an administrative expense involves either a professional employed to assist the bankruptcy estate or an obligation incurred by a debtor during a chapter 11 reorganization.

Each claim should only include any "arrearage" and other charges that occurred before the petition was filed. An arrearage is the total amount of overdue payments, such as on a mortgage, on which the debtor has defaulted, or "fallen behind." Even if the debtor subsequently has made payments on the debt, the payments usually will have been applied to the current payment due, leaving earlier installments "in arrears" until made up by additional payments. Often the amounts in arrears also will accrue interest so that the total amount of an arrearage usually will be higher than the total amount of missed payments. A chapter 13 debtor needs to know the amount of any arrearage so that the plan can provide for the debtor to pay the full amount that has accrued.

Creditors must attach to the proof of claim form copies of any documents showing that the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, the creditor must attach an explanation of why they are not available. It is essential that a creditor include all documents relating to the claim, not just those that fit the categories provided in this section of the form. For some claims, a simple statement of account may be enough. Other claims may require extensive documentation. It is in the best interest of the creditor to organize the supporting documents as clearly and simply as possible. Evidence of the perfection of a security interest should also be included, such as a copy of any mortgage, lien, financing statement, or other instrument filed or recorded or a statement of reasons why no action was necessary for perfection. Fed. R. Bankr. P. 3001(d).

At the end of the form, a creditor or other person authorized to file the claim should be sure to include the full printed name and title, if any, of the creditor or authorized person, the creditor's or authorized person's full signature, and the date the form was completed. A power of attorney should be attached, if applicable. By signing the proof of claim, the creditor or other authorized person is stating under oath that in calculating the amount of the claim, the creditor has given the debtor credit for all payments received from the debtor.

Under section 152 of title 18, United States Code, it is a federal crime to file a false or fraudulent claim in a bankruptcy case. Section 152 provides for a fine, for imprisonment of up to five years, or both for a violation. Section 3571 of title 18 provides a maximum fine of \$250,000 for an individual offender and \$500,000 for any "organization" convicted of a violation. Alternatively, section 3571 provides for restitution based on damages caused by the offense, opening the potential for a restitution-based fine even higher than \$500,000.

Advisory Committee Note

This form replaces former Official Forms No. 19, No. 20, and No. 21. The box format and simplified language are intended to facilitate completion of the form.

The form directs the claimant to attach documents to support the claim or, if voluminous, a summary of such documents. These include any security agreement (if not included in the writing on which the claim is founded), and evidence of perfection of any security interest. See Committee Note to Rule 3001(d) concerning satisfactory evidence of perfection. If the claim includes prepetition interest or other charges such as attorney fees, a statement giving a detailed breakdown of the elements of the claim is required.

Rule 2002(g) requires the clerk to update the mailing list in the case by substituting the address provided by a creditor on a proof of claim, if that address is different from the one supplied by the debtor. The form contains checkboxes to assist the clerk in performing this duty. The form also alerts the trustee when the claim is an amendment to or replacement for an earlier claim.

Advisory Committee Note to 1993 Amendment

The form has been amended to accommodate inclusion of the priority afforded in § 507(a)(8) of the Code, which was added by Pub.L. No. 101-647, (Crime Control Act of 1990), and to avoid the necessity of further amendment to the form if other priorities are added to § 507(a) in the future. In addition, sections 4 and 5 of the form have been amended to clarify that only prepetition arrearages and charges are to be included in the amount of the claim.

Advisory Committee Note to 1995 Amendment

The form is amended to add the seventh priority granted by the Bankruptcy Reform Act of 1994 to debts for alimony, maintenance, or support of a spouse, former spouse, or child of the debtor. The form also amends the Code reference to the priority afforded to tax debts and the dollar maximums for the priorities granted to wages and customer deposits in conformity with amendments made by the 1994 Act to section 507(a) of the Code. The 1994 Act also amended section 104 of the Code to provide for future adjustment of the dollar amounts specified in section 507(a) to be made by administrative action at three-year intervals to reflect changes in the consumer price index. The form is amended to include notice that these dollar amounts are subject to change without formal amendment to the official form.

Advisory Committee Note to 1997 Amendment

Numbered sections 4 and 5 of the form have been reformatted to eliminate redundant information and make it easier to complete the form correctly. A creditor will report the total amount of the claim first, and will report only that amount unless the claim is secured by collateral or entitled to a priority under § 507 of the Code.

Explanatory definitions and instructions for completing the form also have been added.

Form 11A

GENERAL POWER OF ATTORNEY

Official Form 11A
6/90UNITED STATES BANKRUPTCY COURT

DISTRICT OF _____In re _____
DebtorCase No. _____
Chapter _____*[Designation of Character of Paper]*

GENERAL POWER OF ATTORNEY

To _____ of * _____ and
_____ of * _____

The undersigned claimant hereby authorizes you, or any one of you, as attorney in fact for the undersigned and with full power of substitution, to vote on any question that may be lawfully submitted to creditors of the debtor in the above-entitled case; *[if appropriate]* to vote for a trustee of the estate of the debtor and for a committee of creditors; to receive dividends; and in general to perform any act not constituting the practice of law for the undersigned in all matters arising in this case.

Dated: _____

Signed: _____

By _____

as _____

Address: _____
_____*[If executed by an individual]* Acknowledged before me on _____.

[If executed on behalf of a partnership] Acknowledged before me on _____, by _____, who says that he [or she] is a member of the partnership named above and is authorized to execute this power of attorney in its behalf.

[If executed on behalf of a corporation] Acknowledged before me on _____, by _____, who says that he [or she] is _____ of the corporation named above and is authorized to execute this power of attorney in its behalf.

[Official character.]

* State mailing address.

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 11A**GENERAL POWER OF ATTORNEY****I. INTRODUCTION**

A power of attorney is an instrument that allows an individual, partnership, or corporation to authorize a specific individual to act as its agent or “attorney in fact” for certain matters. An “attorney in fact” is an agent who is appointed and authorized to act in place of another, as distinguished from an “attorney at law”. A power of attorney does not authorize an individual to practice law and should not be confused with legal representation by an attorney, who is licensed by the state to engage in the practice of law.

A power of attorney may be either general or special. A general power of attorney is broader in scope. For example, it may authorize the agent to handle all general business transactions. On the other hand, a special power of attorney limits the scope of authority to acting for a particular purpose or performing a particular act. Official Form 11A may be used for a general power of attorney, and Official Form 11B may be used for a special power of attorney.

II. APPLICABLE LAW AND RULES

Rule 9010(c) of the Federal Rules of Bankruptcy Procedure (referred to as “Bankruptcy Rule” or “Fed. R. Bankr. P.”) states that a power of attorney must conform substantially to the Official Form, and that it must be acknowledged before an authorized person.

The authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose other than the execution and filing of a proof of claim or the acceptance or rejection of a plan shall be evidenced by a power of attorney conforming substantially to the appropriate Official Form. The execution of any such power of attorney shall be acknowledged before one of the officers enumerated in 28 U.S.C. § 459, § 953, Rule 9012, or a person authorized to administer oaths under the laws of the state where the oath is administered.

Fed.R.Bankr.P. 9010(c).

Bankruptcy judges, clerks, and deputy clerks of bankruptcy courts are authorized by statute to administer oaths and affirmations and to take acknowledgments, 28 U.S.C. §§ 459, 953. Moreover, Bankruptcy Rule 9012 provides that the following persons may administer oaths and affirmations and take acknowledgments: a bankruptcy judge, clerk and deputy clerks of the bankruptcy court, United States trustee, officer authorized to administer oaths in proceedings before the courts of the United States or under the laws of the state where the oath is to be taken, or a diplomatic or consular officer of the United States in any foreign country. Additionally, Bankruptcy Rule 9010(c) authorizes the use of a notary public, who is authorized by the state government to administer oaths, take acknowledgments, and attest to and certify with an official seal the authenticity of signatures.

The Official Form should be used with alterations as may be appropriate. Fed. R. Bankr. P. 9009.

III. DIRECTIONS

The caption should be placed at the top of the page and should conform to Official Form 16B. Instructions for Official Form 16B, Caption (Short Title), may be found following that form.

The name of the individual who is being authorized to act as "attorney in fact" (as distinguished from an "attorney at law") on behalf of the creditor should be placed on the first line. The address of the "attorney in fact" should be placed after the (*) asterisk. A second line is provided and should be used only if more than one individual is being authorized to act as attorney in fact. The name and address of a second person should be place on the second line.

The individual (or the individual acting on behalf of a partnership or corporation) that is granting a power of attorney should date and sign the document in the presence of a notary public or other person authorized to take acknowledgments. An individual should sign on the first line after the word "Signed," and print the individual's name on the second line after the word "By." An individual acting on behalf of a partnership or corporation should place the name of the partnership or corporation on the first line, sign the individual's own name on the second line, and state the individual's title on the third line. Additional lines are provided for the address of the person granting the power of attorney.

Advisory Committee Note

This form previously was numbered Official Form No. 17.

Form 11B

SPECIAL POWER OF ATTORNEY

Official Form 11B
6/90

UNITED STATES BANKRUPTCY COURT
_____ DISTRICT OF _____

In re _____,
Debtor

Case No. _____
Chapter _____

[Designation of Character of Paper]

SPECIAL POWER OF ATTORNEY

To _____ of * _____, and
_____ of * _____.

The undersigned claimant hereby authorizes you, or any one of you, as attorney in fact for the undersigned [*if desired:* and with full power of substitution,] to attend the meeting of creditors of the debtor or any adjournment thereof, and to vote in my behalf on any question that may be lawfully submitted to creditors at such meeting or adjourned meeting, and for a trustee or trustees of the estate of the debtor.

Dated: _____

Signed: _____

By _____
as _____

Address: _____

[*If executed by an individual*] Acknowledged before me on
_____.

[*If executed on behalf of a partnership*] Acknowledged before me
_____, by _____, who says that he [*or*
she] is a member of the partnership named above and is authorized to execute this
power of attorney in its behalf.

[*If executed on behalf of a corporation*] Acknowledged before me on
_____, by _____, who says that he [*or*
she] is _____ of the corporation named above and is autho-
rized to execute this power of attorney in its behalf.

[Official character.]

* State mailing address.

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 11B

SPECIAL POWER OF ATTORNEY

I. INTRODUCTION

A power of attorney is an instrument that allows an individual, partnership, or corporation to authorize a specific individual to act as its agent or "attorney in fact" for certain matters. An "attorney in fact" is an agent who is appointed and authorized to act in place of another as distinguished from an "attorney at law". A power of attorney does not authorize an individual to practice law and should not be confused with legal representation by an attorney, who is licensed by the state to engage in the practice of law.

A power of attorney may be either general or special. A general power of attorney is broader in scope. For example, it may authorize the agent to handle all general business transactions. On the other hand, a special power of attorney limits the scope of authority to acting for a particular purpose or performing a particular act. Official Form 11A may be used for a general power of attorney, and Official Form 11B may be used for a special power of attorney.

II. APPLICABLE LAW AND RULES

Rule 9010(c) of the Federal Rules of Bankruptcy Procedure (referred to as "Bankruptcy Rule" or "Fed. R. Bankr. P.") states that a power of attorney must conform substantially to the Official Form, and that it must be acknowledged before an authorized person.

The authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose other than the execution and filing of a proof of claim or the acceptance or rejection of a plan shall be evidenced by a power of attorney conforming substantially to the appropriate Official Form. The execution of any such power of attorney shall be acknowledged before one of the officers enumerated in 28 U.S.C. § 459, § 953, Rule 9012, or a person authorized to administer oaths under the laws of the state where the oath is administered.

Fed.R.Bankr.P. 9010(c).

Bankruptcy judges, clerks, and deputy clerks of bankruptcy courts are authorized by statute to administer oaths and affirmations and to take acknowledgments, 28 U.S.C. §§ 459, 953. Moreover, Bankruptcy Rule 9012 provides that the following persons may administer oaths and affirmations and take acknowledgments: a bankruptcy judge, clerk and deputy clerks of the bankruptcy court, United States trustee, officer authorized to administer oaths in proceedings before the courts of the United States or under the laws of the state where the oath is to be taken, or a diplomatic or consular officer of the United States in any foreign country. Additionally, Bankruptcy Rule 9010(c) authorizes the use of a notary public, who is authorized by the state government to administer oaths, take acknowledgments, and attest to and certify with an official seal the authenticity of signatures.

The Official Form should be used with alterations as may be appropriate. Fed. R. Bankr. P. 9009.

III. DIRECTIONS

The caption should be placed at the top of the page and should conform to Official Form 16B. Instructions for Official Form 16B, Caption (Short Title), may be found following that form.

The name of the individual who is being authorized to act as attorney in fact on behalf of the creditor should be placed on the first line. The address of the "attorney in fact" should be placed after the (*) asterisk. A second line is provided and should be used only if more than one individual is being authorized to act as "attorney in fact." The name and address of a second person should be place on the second line.

The individual (or the individual acting on behalf of a partnership or corporation) that is granting a power of attorney should date and sign the document in the presence of a notary public or other person authorized to take acknowledgments. An individual should sign on the first line after the word "Signed," and print the individual's name on the second line after the word "By." An individual acting on behalf of a partnership or corporation should place the name of the partnership or corporation on the first line, sign the individual's own name on the second line, and state the individual's title on the third line. Additional lines are provided for the address of the person granting the power of attorney.

Advisory Committee Note

This form previously was numbered Official Form No. 18.

Form 12

ORDER AND NOTICE FOR HEARING ON
DISCLOSURE STATEMENTOfficial Form 12
U.S. Bankruptcy CourtUNITED STATES BANKRUPTCY COURT
____ DISTRICT OF _____

In re _____,)
[Set forth here all names including married,)
maiden, and trade names used by debtor within)
last 6 years.])
 Debtor) Case No. _____)
)
 Address _____)
)
 _____) Chapter 11)
)
 Social Security No(s). _____)
 Employer's Tax Identification No(s). *[if any]* _____)
 _____)

ORDER AND NOTICE FOR HEARING ON DISCLOSURE STATEMENT

To the debtor, its creditors, and other parties in interest:

A disclosure statement and a plan under chapter 11 [or chapter 9] of the Bankruptcy Code having been filed by _____ on _____, IT IS ORDERED and notice is hereby given, that:

1. The hearing to consider the approval of the disclosure statement shall be held at: _____, on _____, at _____ o'clock ____m.

2. _____ is fixed as the last day for filing and serving in accordance with Fed.R.Bankr.P. 3017(a) written objections to the disclosure statement.

3. Within _____ days after entry of this order, the disclosure statement and plan shall be distributed in accordance with Fed.R.Bankr.P. 3017(a).

4. Requests for copies of the disclosure statement and plan shall be mailed to the debtor in possession [or trustee or debtor or _____] at *

Dated: _____

BY THE COURT

United States Bankruptcy Judge

* State mailing address.

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 12
ORDER AND NOTICE FOR HEARING ON DISCLOSURE STATEMENT

I. INTRODUCTION

Official Form 12 is used in chapter 9 municipality cases and chapter 11 reorganization cases to provide certain parties in interest with an order and notice of a hearing to consider the approval of the disclosure statement. The disclosure statement is a document that contains information concerning the assets, liabilities, and business affairs of the debtor sufficient to enable a creditor holding a claim or interest to make an informed judgment about the plan of reorganization. 11 U.S.C. § 1125.

Only the debtor may file a disclosure statement and plan of reorganization within the first 120 days after the order for relief. 11 U.S.C. § 1121(b). (Commencement of a voluntary case by the filing a petition constitutes an order for relief under 11 U.S.C. § 301). Any party in interest, including the debtor, may file a disclosure statement and plan, if (1) a trustee has been appointed in the case; (2) the debtor has not filed a plan within the first 120 days after the order for relief; or (3) the debtor has filed a plan that has not been accepted within 180 days after the order for relief. 11 U.S.C. § 1121(c). The court may, after notice and a hearing, for cause, reduce or enlarge the debtor's exclusive period for filing and obtaining acceptance of a plan. 11 U.S.C. § 1121(d). A party in interest that files a disclosure statement and plan is referred to as the "proponent of the plan" or the "plan proponent."

This form, while legally sufficient, is often simply the starting point for drafting a longer notice containing additional provisions applicable to a particular case. Although issued in the name of the court, the Order and Notice for Hearing on Disclosure Statement normally will be drafted by the attorney for the debtor or other plan proponent. It must be approved by the court before being mailed to creditors and other parties in interest.

II. APPLICABLE LAW AND RULES

Section 1125(a) and (b) of the Bankruptcy Code, applicable in both chapter 9 and chapter 11 cases, provides that a plan proponent must provide a disclosure statement containing "adequate information," as defined below.

"Adequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan . . .

11 U.S.C. § 1125(a)(1).

The filing of a written disclosure statement is preliminary to the voting on a plan of reorganization. Both a written disclosure statement and a plan of reorganization must be filed with the court. 11 U.S.C. § 1121; Federal Rule of Bankruptcy Procedure 3016(c), (referred to as "Bankruptcy Rule" or "Fed. R. Bankr. P.>"). After the disclosure statement is filed, the court must hold a hearing to consider any objections or proposed modifications. The court then determines whether the disclosure statement should be approved. Bankruptcy Rules 3017(a) and 2002 require that the court hold a hearing on not less than 25 days notice. Acceptance or rejection of a plan cannot be solicited without prior court approval of the written disclosure statement. 11 U.S.C. § 1125(b).

Bankruptcy Rule 3017(a) specifies the persons that must receive copies of the disclosure statement and plan of reorganization before the hearing. These documents

will not be sent to all parties in interest because at this stage of the case it could be unnecessarily expensive and confusing. But, any party in interest may request copies. The disclosure statement and plan are sent with the notice of the hearing only to the debtor, any trustee or committee appointed under the Code, the Securities and Exchange Commission, and any party in interest who requests in writing a copy of the statement or plan. Anyone desiring a copy should send a written request to the person mailing the disclosure statement and plan, which generally is the proponent of the plan.

Creditors have an opportunity to file written objections to the disclosure statement on or before the date fixed in the Order and Notice for Hearing on Disclosure Statement. The procedures set forth in Bankruptcy Rule 3017 must be followed. Rule 3017(a) specifies that objections may be filed at any time before approval of the disclosure statement, or the court may fix an earlier date for filing objections. Any objections to the disclosure statement must be filed and served on the debtor, the trustee, any committee appointed in the case, the United States trustee, and such other entity as the court may designate. Fed. R. Bankr. P. 3017(a).

At or after the hearing, the court will determine whether to approve the disclosure statement. Fed. R. Bankr. P. 3017(b). The “adequate information” standard, which the disclosure statement must meet and which is set forth in 11 U.S.C. § 1125(a)(1), is governed by judicial discretion and the circumstances of the case. After the disclosure statement has been approved, the proponent of the plan can begin to solicit acceptances of the plan, and creditors may solicit rejections of the plan.

In addition to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, each district may have local bankruptcy court rules that may contain further requirements. Local rules may be obtained at the bankruptcy clerk’s office.

NOTE: If the debtor qualifies and has elected to be considered a “small business” under 11 U.S.C. § 1121(e), the case is put on a “fast track” and treated differently from a regular chapter 11 case under the Code. For example, time periods are shortened for filing a plan and a separate hearing to approve the disclosure statement is not mandatory. The court may conditionally approve a disclosure statement, subject to final approval after notice and a hearing held later. Solicitation of votes for acceptance or rejection of the plan may proceed based on the conditional approval of the disclosure statement. Thereafter, the disclosure statement hearing may be combined with the confirmation hearing. 11 U.S.C. § 1125(f). Director’s Procedural Forms B 13S and B 15S may be used in small business cases. These forms are in Part II of this Manual.*

III. DIRECTIONS

1. The Official Form should be used with alterations as may be appropriate in the particular case. Fed. R. Bankr. P. 9009. The form also may be adapted for use if more than one disclosure statement is to be considered by the court.

2. The caption should be placed at the top of the page and should conform to Official Form 16A. Instructions for Official Form 16A, Caption (Full), may be found following that form.

3. The person who filed the disclosure statement and plan of reorganization is the plan proponent. That person’s name should be placed on the first line after the

* Reference is to the *Bankruptcy Forms Manual*, as issued by the Division of Bankruptcy, Administrative Office of the United States Courts (2000).

words "filed by." The date that the statement and plan were filed should follow the name after the word "on."

4. In paragraph number 1, the plan proponent should state the place where the hearing is going to be held, (such as "United States Bankruptcy Court") and the street address in the first blank space. The date of the hearing should appear in the second blank space. The time of the hearing should appear in the third blank space and morning (a.m.) or afternoon (p.m.) should be placed in the fourth blank space.

5. In paragraph number 2, the date that the court fixes as the last day for filing and serving objections should appear in the only blank space.

6. In paragraph number 3, the plan proponent should state the number of days within which the proponent will mail the documents.

7. In paragraph number 4, the plan proponent should state the proponent's role in the case, (such as debtor in possession, trustee, debtor, etc.), or state the proponent's name on the first line. On the second line, the proponent should state the address at which requests for copies of the disclosure statement and plan should be made. This often will be a law firm or, in a very large case, a private contractor. A useful form of address is

_____ (Name of Debtor)

c/o _____ (Name of Law Firm or Contractor)

_____ (Street Address)

8. The date that the judge signs the order and notice should be placed after the word "Dated." The bankruptcy Judge's signature should appear on the signature line.

9. The Order and Notice For Hearing on Disclosure Statement must be filed and copies mailed to those parties in interest specified in Bankruptcy Rule 3017(a), discussed above.

NOTE: Paragraph 4 contains alternate language printed in [] brackets. When preparing the form for use in a case, select the appropriate word or phrase and omit all alternates.

Advisory Committee Note

This form previously was numbered Official Form No. 28. The form is related to Rule 3017(a). Section 1125 of the Code requires court approval of a disclosure statement before votes may be solicited for or against a plan in either chapter 11 reorganization or chapter 9 municipality cases.

Objections to the disclosure statement may be filed. Rule 3017(a) specifies that the court may fix a time for the filing of objections or they can be filed at any time prior to approval of the statement.

Rule 3017(a) also specifies the persons who are to receive copies of the statement and plan prior to the hearing. These documents will not be sent to all parties in interest because at this stage of the case it could be unnecessarily expensive and confusing. However, any party in interest may request copies. The request should be made in writing (Rule 3017(a)), and sent to the person mailing the statement and plan which, as the form indicates, would usually be the proponent of the plan.

This form may be adapted for use if more than one disclosure statement is to be considered by the court.

Official Form 13
b-2c

In re _____,)
[Set forth here all names including married,)
maiden, and trade names used by debtor within)
last 6 years.])
Debtor) Case No. _____)
Address _____)
_____) Chapter 11)
Social Security No(s). _____)
Employer's Tax Identification No(s). *[if any]* _____)

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D. If acceptances are filed for more than one plan, preferences among the plans so accepted may be indicated.

E. *[If appropriate]* _____
is fixed for the hearing on confirmation of the plan *[or plans]*.

F. *[If appropriate]* _____ is fixed as the last day for filing and serving pursuant to Fed.R.Bankr.P. 3020(b)(1) written objections to confirmation of the plan.

Dated: _____

BY THE COURT

United States Bankruptcy Judge

[If the court directs that a copy of the opinion should be transmitted in lieu of or in addition to the summary thereof, the appropriate change should be made in paragraph C of this order.]

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 13
ORDER APPROVING DISCLOSURE STATEMENT AND FIXING
TIME FOR FILING ACCEPTANCES OR REJECTIONS OF
PLAN, COMBINED WITH NOTICE THEREOF

I. INTRODUCTION

Official Form 13 is used in chapter 11 reorganization cases to provide certain parties in interest with notice of the court's approval of the disclosure statement, their opportunity to file acceptances or rejections of the plan, and an order and notice of a hearing to consider the approval of the plan of reorganization. Appropriate documents are also provided to parties in interest with the notice or within the time stated in the notice. These may include either the plan or a summary of the plan, a court approved summary of the court's opinion approving the disclosure statement, the approved disclosure statement, a ballot for accepting or rejecting the plan, and other information or documents as the court may direct.

This form, while legally sufficient for its purpose, is often simply a starting point for the drafting of a longer notice containing additional provisions applicable to the particular case. Although issued in the name of the court, the Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof normally will be drafted by the attorney for the debtor or other plan proponent. It must be approved by the court before being mailed to creditors and other parties in interest.

II. APPLICABLE LAW AND RULES

There is no specific statutory time limit set for filing a plan. But, only the debtor may file a disclosure statement and plan of reorganization within the first 120 days after the order for relief. 11 U.S.C. § 1121(b). (Commencement of a voluntary case by the filing of a petition constitutes an order for relief under 11 U.S.C. § 301.) The debtor's exclusive period to file a statement and plan may be extended or reduced by the court. 11 U.S.C. § 1121(d). Moreover, any party in interest, including the debtor, may file a disclosure statement and plan, if (1) a trustee has been appointed in the case; (2) the debtor has not filed a plan within the first 120 days after the order for relief or any extension granted by the court; or (3) the debtor has filed a plan that has not been accepted within 180 days after the order for relief or any extension granted by the court. 11 U.S.C. § 1121(c) and (d). A party in interest that files a disclosure statement and plan is referred to as the "proponent of the plan" or the "plan proponent."

A plan proponent is subject to the requirements of section 1125 of the Code with respect to disclosure and solicitation of acceptance of the plan. Acceptance or rejection of a plan cannot be solicited without the court first approving the written disclosure statement. 11 U.S.C. § 1125(b). On or before the approval of the disclosure statement, the court must set a time within which holders of claims or interests may vote to accept or reject the plan, and it must set a date for a hearing on confirmation of the plan. Rule 3017(c) of the Federal Rules of Bankruptcy Procedure (referred to as "Bankruptcy Rule" or "Fed. R. Bankr. P.")

On approval of the disclosure statement, plan proponents may solicit holders of claims or interests for acceptance of a plan. 11 U.S.C. § 1125(b). Unless the court orders otherwise regarding any unimpaired classes of creditors or equity security holders, the debtor in possession, trustee, proponent of the plan, or clerk, as ordered by the court, must mail to all creditors and equity security holders, and to the U.S. trustee, (1) the plan or court approved summary of the plan, (2) the approved

disclosure statement, (3) notice of the time within which to file acceptance and rejection of the plan, and (4) other information as the court may direct, including any opinion of the court approving the disclosure statement or court approved summary of the opinion. Fed. R. Bankr. P. 3017(d). In addition, notice of the time fixed for filing objections to confirmation of the plan and notice of the hearing on confirmation must be mailed to all creditors and equity security holders, and a ballot must be mailed to those entitled to vote on the plan. Fed. R. Bankr. P. 2002(b), 3017(d).

Plan proponents should refer to the Bankruptcy Code requirements regarding the classification of claims or interests and the contents of the plan. 11 U.S.C. §§ 1122, 1123. Section 1123(a) lists the mandatory provisions of the plan, and section 1123(b) lists the discretionary provisions. Section 1123(a)(1) provides that a chapter 11 plan must designate classes of claims and interests for treatment under the reorganization.

Under section 1126(c) of the Code, an entire class of claims is considered to have accepted a plan if the plan has been accepted by creditors that hold: (a) at least two-thirds in amount, and (b) more than one-half in number of allowed claims of the class held by creditors that have accepted or rejected the plan, i.e., creditors that have voted on the plan. A class of equity security interests is considered to have accepted a plan if the plan has been accepted by the holders of two-thirds in amount of such allowed interests that have voted on the plan. 11 U.S.C. § 1126(d). Under section 1129(a)(10), if there are impaired classes of claims, the court cannot confirm a plan unless it has been accepted by at least one class of non-insiders who hold impaired claims (i.e., claims that are not going to be paid completely or in which some legal, equitable, contractual right is altered). Moreover, under section 1126(f), holders of unimpaired claims are considered to have accepted the plan.

Section 1127(a) of the Code provides that the plan proponent may modify the plan at any time before confirmation, and the modified plan will become the plan. But the plan as modified must meet all the requirements of chapter 11. Bankruptcy Rule 3019 provides that, when there is a proposed modification after balloting has been conducted and the court finds after a hearing that the proposed modification does not adversely affect the treatment of any creditor who has not accepted the modification in writing, the modification shall be considered to have been accepted by all creditors who previously accepted the plan. If it is determined that the proposed modification does have an adverse effect on the claims of the nonconsenting creditors, then another balloting must take place.

Because more than one plan may be submitted to the creditors for approval. Bankruptcy Rule 3016(b) requires that every proposed plan and modification be dated and identified with the name of the entity or entities submitting such plan or modification. When competing plans are presented and meet the requirements for confirmation, the court must consider the preferences of the creditors and equity security holders in determining which plan to confirm.

Any party in interest may file an objection to confirmation of a plan within the time fixed by the court. The Code requires the court, after notice, to hold a hearing on the confirmation of a plan. 11 U.S.C. § 1128. Any objection to confirmation must be filed and served on the debtor, the trustee, the proponent of the plan, any appointed committee, and any other entity designated by the court. Fed. R. Bankr. P. 3020(b)(1). An objection to confirmation is treated as a contested matter under Bankruptcy Rule 9014. If no objection to confirmation has been timely filed, the Code allows the court to determine that the plan has been proposed in good faith and according to law. Fed. R. Bankr. P. 3020(b)(2).

At or after the confirmation hearing, the court may confirm the plan and thereby make it binding on all creditors and equity security holders. Before confirmation can

be granted, the court must be satisfied that there has been compliance with the requirements of confirmation set forth in section 1129 of the Code, even in the absence of any objections. In order to confirm the plan, the court must find that the requisite acceptances have been obtained, that the plan is feasible, is proposed in good faith, and that the plan and the proponent of the plan are in compliance with the Code. In addition, the court must find that confirmation of the plan is not likely to be followed by liquidation or the need for further financial reorganization, unless it is proposed in the plan. 11 U.S.C. § 1129(a)(11). For a complete list of requirements for confirmation of a plan, parties in interest may refer to section 1129 of the Code.

In the event the required acceptances are not obtained, the court may nevertheless confirm the plan if it finds that the plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of section 1129(b) of the Code. This procedure is sometimes referred to as a “cramdown.”

In addition to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, each district may have local bankruptcy court rules that may contain further requirements. Local rules may be obtained at the bankruptcy clerk’s office.

NOTE: If the debtor qualifies and has elected to be considered a “small business” under 11 U.S.C. § 1121(e), the case is put on a “fast track” and treated differently from a regular chapter 11 case under the Code. For example, time periods are shortened for filing a plan and a separate hearing to approve the disclosure statement is not mandatory. The court may conditionally approve a disclosure statement, subject to final approval after notice and a hearing held later. Solicitation of votes for acceptance or rejection of the plan may proceed based on the conditional approval of the disclosure statement. Thereafter, the disclosure statement hearing may be combined with the confirmation hearing. 11 U.S.C. § 1125(f). Director’s Procedural Forms B 13S and B 15S may be used in small business cases. These forms are in Part II of this Manual.*

III. DIRECTIONS

1. The Official Form should be used with alterations as may be appropriate. Fed. R. Bankr. P. 9009. The form also may be adapted for use if more than one plan is to be considered by the court.

2. The caption should be placed at the top of the page and should conform to Official Form 16A. Instructions for Official Form 16A, Caption (Full), may be found following that form.

3. A person who files a disclosure statement and plan of reorganization is referred to below as a “plan proponent” or “proponent of a plan.”

4. The first plan proponent’s name should be placed in the first blank space after the words “having been filed by.” The date that the first plan proponent filed the disclosure statement should follow the plan proponent’s name after the word “on.”

5. In the event that a second person filed a disclosure statement and plan, the second plan proponent’s name should be placed in the blank space after the words “and by.” The date that the second plan proponent filed the disclosure statement should follow the plan proponent’s name after the word “on.”

6. The name of the first plan proponent that filed a plan should appear in the blank space after the words “chapter 11 of the Code filed by.” The date that the first plan proponent filed the plan should follow the plan proponent’s name after the word “on.”

* Reference is to the *Bankruptcy Forms Manual*, as issued by the Division of Bankruptcy, Administrative Office of the United States Courts (2000).

7. If applicable, the name of the second plan proponent that filed a plan should appear in the blank space after the words "and by." The date that the second plan proponent filed the plan should follow the plan proponent's name after the word "on."

8. If appropriate, the date that any modification to a plan was filed should appear in the blank space after the words "modification filed on."

The Order and Notice:

A. In paragraph A, the name of the first plan proponent should appear in the first blank space after the words "filed by." The date of the disclosure statement should appear in the blank space following the word "dated."

If appropriate, the name of the second plan proponent should appear in the blank space after the words "and by." The date of the disclosure statement should appear in the blank space following the word "dated."

B. In paragraph B, the date that the court fixed as the last day for filing written acceptances or rejections of the plan(s) should appear in the blank space.

C. In paragraph C, the plan proponent should state the number of days, after entry of the order, within which the proponent will mail the appropriate documents. If the documents are included with the notice in a single mailing, the language of the paragraph should be altered to reflect that fact. If the court directs that a copy of its opinion approving the disclosure statement should be transmitted in addition to the other documents, the appropriate change should be made in paragraph C of the order. The date of the court's opinion approving the disclosure statement(s) should be included in the second blank space after the word "dated."

D. Paragraph D provides that if a party files an acceptance for more than one plan, the party may indicate which plan the party prefers.

E. If a date for the confirmation hearing is fixed, the day, time of day (including a.m. or p.m.), and address of such confirmation hearing should be placed in the blank space in paragraph E.

F. If appropriate, the date of the last day for filing and serving written objections to the confirmation of the plan(s) should be placed in the blank space in paragraph F.

The date that the judge signs the order and notice should be placed after the word "Dated." The bankruptcy judge's signature should appear on the signature line.

The Order Approving Disclosure Statement and Fixing Time For Filing Acceptances or Rejections of Plan, Combined with Notice Thereof must be filed and copies mailed to those parties in interest specified in Bankruptcy Rule 3017(d), discussed above.

NOTE: Many paragraphs of this form contain alternate language printed in | | brackets. When preparing the form for use in a case, select the appropriate word or phrase and omit all alternates. In the event that paragraph E or F, or both, are not appropriate in a particular case (because the relevant dates have not been fixed by the court), the preparer may omit the paragraph(s). A further notice will be required after the dates have been fixed, however. A better practice would be to alter paragraph(s) E or F, or both, to inform creditors and parties in interest that the date(s) have not been fixed and that an additional notice will be sent.

Advisory Committee Note

This form is derived from former Official Form No. 29. The form may be adapted for use if more than one disclosure statement is approved by the court.

Form 14

BALLOT FOR ACCEPTING OR REJECTING PLAN

Official Form 14
(9/97)

United States Bankruptcy Court

District of _____

In re _____)
Set forth here all names including married,)
maiden, and trade names used by debtor within)
last 6 years.])
Debtor) Case No. _____)
Address _____)
_____) Chapter 11
_____)
Social Security No(s). _____)
Employer's Tax Identification No(s). *[if any]:* _____)
_____)

CLASS / / BALLOT FOR ACCEPTING OR REJECTING
PLAN OF REORGANIZATION

[Proponent] filed a plan of reorganization dated *[Date]* (the "Plan") for the Debtor in this case. The Court has *[conditionally]* approved a disclosure statement with respect to the Plan (the "Disclosure Statement"). The Disclosure Statement provides information to assist you in deciding how to vote your ballot. If you do not have a Disclosure Statement, you may obtain a copy from *[name, address, telephone number and telecopy number of proponent/proponent's attorney]*. Court approval of the disclosure statement does not indicate approval of the Plan by the Court.

You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and your classification and treatment under the Plan. Your *[claim]* *[equity interest]* has been placed in class / / under the Plan. If you hold claims or equity interests in more than one class, you will receive a ballot for each class in which you are entitled to vote.

If your ballot is not received by *[name and address of proponent's attorney or other appropriate address]* on or before *[date]*, and such deadline is not extended, your vote will not count as either an acceptance or rejection of the Plan.

If the Plan is confirmed by the Bankruptcy Court it will be binding on you whether or not you vote.

ACCEPTANCE OR REJECTION OF THE PLAN

[At this point the ballot should provide for voting by the particular class of creditors or equity holders receiving the ballot using one of the following alternatives:]

[If the voter is the holder of a secured, priority, or unsecured nonpriority claim.]

Form 14

OFFICIAL FORMS

Official Form 14
continued

The undersigned, the holder of a Class [] claim against the Debtor in the unpaid amount of
Dollars (\$)

[or, if the voter is the holder of a bond, debenture, or other debt security:]

The undersigned, the holder of a Class [] claim against the Debtor, consisting of Dollars (\$) principal amount of *[describe bond, debenture, or other debt security]* of the Debtor (For purposes of this Ballot, it is not necessary and you should not adjust the principal amount for any accrued or unmatured interest.)

[or, if the voter is the holder of an equity interest:]

The undersigned, the holder of Class [] equity interest in the Debtor, consisting of _____ shares or other interests of *[describe equity interest]* in the Debtor

[In each case, the following language should be included:]

(Check one box only)

[] ACCEPTS THE PLAN

[] REJECTS THE PLAN

Dated: _____

Print or type name: _____

Signature: _____

Title (if corporation or partnership) _____

Address: _____

RETURN THIS BALLOT TO:

[Name and address of proponent's attorney or other appropriate address]

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 14
BALLOT FOR ACCEPTING OR REJECTING PLAN

I. INTRODUCTION

Official Form 14 is used as a ballot for accepting or rejecting the plan(s) of reorganization. The ballot is to be used by general creditors (including secured, priority unsecured, and nonpriority unsecured creditors), bondholders, debenture holders, other debt security holders, and equity security holders who are entitled to vote on the plan(s).

A PERSON ENTITLED TO VOTE ON THE PLAN MUST COMPLETE AND RETURN THE BALLOT IN ORDER TO HAVE THE VOTE COUNT.

II. APPLICABLE LAW AND RULES

On approval of the disclosure statement, plan proponents may solicit holders of claims or interests for acceptance of a plan. 11 U.S.C. § 1125(b). Unless the court orders otherwise regarding any unimpaired classes of creditors or equity security holders, the debtor in possession, trustee, proponent of the plan, or clerk, as ordered by the court, must mail to all creditors and equity security holders, and to the U.S. trustee, (1) the plan or court approved summary of the plan, (2) the approved disclosure statement, (3) notice of the time within which to file acceptance and rejection of the plan, and (4) other information as the court may direct, including any opinion of the court approving the disclosure statement or court approved summary of the opinion. Rule 3017(d) of the Federal Rules of Bankruptcy Procedure (referred to as "Bankruptcy Rule" or "Fed. R. Bankr. P.") In addition, notice of the time fixed for filing objections to confirmation of the plan and notice of the hearing on confirmation must be mailed to all creditors and equity security holders, and a ballot must be mailed to those entitled to vote on the plan. Fed. R. Bankr. P. 2002(b), 3017(d).

Section 1123(a)(1) provides that a chapter 11 plan must designate classes of claims and interests for treatment under the reorganization.

Under section 1126(c) of the Code, an entire class of claims is considered to have accepted a plan if the plan has been accepted by creditors that hold: (a) at least two-thirds in amount, and (b) more than one-half in number of allowed claims of the class held by creditors that have accepted or rejected the plan, i.e., creditors that have voted on the plan. A class of equity security interests is considered to have accepted a plan if the plan has been accepted by the holders of two-thirds in amount of such allowed interests that have voted on the plan. 11 U.S.C. § 1126(d). Under section 1129(a)(10), if there are impaired classes of claims, the court cannot confirm a plan unless it has been accepted by at least one class of non-insiders who hold impaired claims (i.e., claims that are not going to be paid completely or in which some legal, equitable, contractual right is altered). Moreover, under section 1126(f), holders of unimpaired claims are considered to have accepted the plan.

Entities entitled to accept or reject the plan must do so within the time fixed by the court. Fed. R. Bankr. P. 3018(a). Subject to Bankruptcy Rule 3018(b), a creditor or equity security holder whose claim is based on a security of record is not entitled to vote on a plan unless they were the holder of record of such security on the date the order approving the disclosure statement was entered. Fed. R. Bankr. P. 3018(a). An acceptance or rejection must be in writing; identify the plan(s); be signed by the creditor, equity security holder or an authorized agent; and conform to the Official Form. More than one plan may be accepted or rejected by the voting person, and if more than one plan is accepted, the voting person may designate a preference or preferences among the plans. Fed. R. Bankr. P. 3018(c). A creditor holding an allowed

claim that is partly secured and partly unsecured is entitled to accept or reject a plan in both capacities. Fed. R. Bankr. P. 3018(d).

Bankruptcy Rule 3018(b) allows the acceptance or rejection of the plan before commencement of the case if certain solicitation requirements were satisfied under Bankruptcy Rule 3018(b) and section 1126(b) of the Code.

Section 1127(a) of the Code provides that the plan proponent may modify the plan at any time before confirmation, and the modified plan will become the plan. But the plan as modified must meet all the requirements of chapter 11. Bankruptcy Rule 3019 provides that, when there is a proposed modification after balloting has been conducted and the court finds after a hearing that the proposed modification does not adversely affect the treatment of any creditor who has not accepted the modification in writing, the modification shall be deemed to have been accepted by all creditors who previously accepted the plan. If it is determined that the proposed modification does have an adverse effect on the claims of the nonconsenting creditors, then another balloting must take place.

Because more than one plan may be submitted to the creditors for approval, Bankruptcy Rule 3016(b) requires that every proposed plan and modification be dated and identified with the name of the entity or entities submitting such plan or modification. When competing plans are presented and meet the requirements for confirmation, the court must consider the preferences of the creditors and equity security holders in determining which plan to confirm.

The Code requires the court, after notice, to hold a hearing on the confirmation of a plan. 11 U.S.C. § 1128. At or after the confirmation hearing, the court may confirm the plan and make it binding on all creditors and equity security holders, if it is accepted by the holders of two-thirds in amount and more than one-half in number of claims in each class of creditors and the holders of two-thirds in amount of equity security interests in each class voting on the plan. Before confirmation can be granted, the court also must be satisfied that there has been compliance with the other requirements of confirmation set forth in section 1129 of the Code, even in the absence of any objections. In order to confirm the plan, the court must find that the plan is feasible, is proposed in good faith, and that the plan and the proponent of the plan are in compliance with the Code. In addition, the court must find the confirmation of the plan is not likely to be followed by liquidation or the need for further financial reorganization, unless it is proposed in the plan. 11 U.S.C. § 1129(a)(11). For a complete list of requirements for confirmation of a plan, parties in interest may refer to section 1129 of the Code.

In the event the required acceptances are not obtained, the court may nevertheless confirm the plan if the court finds that the plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of section 1129(b) of the Code. This procedure is sometimes referred to as a “cramdown.”

In addition to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, each district may have local bankruptcy court rules that may contain further requirements. Local rules may be obtained at the bankruptcy clerk’s office.

III. DIRECTIONS

1. Directions or blanks for the proponent (the person who filed the disclosure statement and plan of reorganization) to complete the text of the ballot are in italics and enclosed in brackets on the Official Form. Only the applicable language from the alternatives shown on the Official Form should be included in the ballot, but the ballot may be modified to the particular requirements of the case. See Fed. R. Bankr. P. 9009. The form is designed to be customized by the proponent so that each class of

creditor, debt security holder, or equity security holder under the plan will receive a ballot that only applies to that class.

2. If the plan provides for creditors in a class to have the right to reduce their claims so as to qualify for treatment given to creditors whose claims do not exceed a specified amount, the ballot should make provisions for the exercise of that right. See 11 U.S.C. § 1122(b).

3. If debt or equity securities are held in the name of a broker/dealer or nominee, the ballot should require the furnishing of sufficient information to assure that duplicate ballots are not submitted and counted and that ballots submitted by a broker/dealer or nominee reflect the votes of the beneficial holders of such securities. See Fed. R. Bankr. P. 3017(e).

4. In the event that more than one plan of reorganization is to be voted upon, the form of the ballot will need to be adapted to permit holders of claims or equity interests (a) to accept or reject each plan being proposed, and (b) to indicate preferences among the competing plans. See 11 U.S.C. § 1129(c).

5. The proponent should customize the ballot for the class to which the ballot applies before mailing the ballot to a person entitled to vote on the plan. Holders of claims or equity security interests in more than one class may receive, and are entitled to vote, more than one ballot.

6. The caption should be placed at the top of the page and should conform to Official Form 16A. Instructions for Official Form 16A, Caption (Full), may be found following that form.

7. The proponent should place the proponent's name and the date the plan was filed with the court on the first line in the spaces indicated.

8. The proponent should indicate on the second line whether the disclosure statement was approved or conditionally approved by the court.

9. The proponent should indicate on the fifth line how a creditor or equity security holder may obtain a copy of the disclosure statement.

10. The proponent should specify in the second paragraph how the claim or equity interest of the person receiving the ballot is classified under the plan.

11. The third paragraph includes the name and address to which persons entitled to vote on the plan are to mail their ballots and the date set by the court as the deadline for returning the ballot.

12. The portion of the text labeled ACCEPTANCE OR REJECTION OF PLAN includes three versions of a statement to be completed by persons entitled to vote on the plan. One version is for holders of secured, priority, or unsecured nonpriority claims. The second version is for holders of bonds, debentures, or other debt securities. The third version is for holders of equity interests. The proponent should include only the applicable language for the person receiving the ballot.

13. General creditors should specify the classification of their claim under the plan and the unpaid amount of the claim in the spaces indicated.

14. Bondholders, debenture holders, and other debt security holders should specify the classification of their debt security under the plan, the principal amount of their claim in dollars, and a description of their bond, debenture, or other debt security in the spaces indicated.

15. Equity security holders should specify the classification of their equity interest under the plan, the number of shares or other interests which they hold, and a description of their equity interest in the spaces indicated.

16. The language following the three alternative statements should be included in all ballots. A person voting on the plan is asked to check only one box, either "Accepts the Plan" or "Rejects the Plan."

17. A person voting on the plan should date the ballot on the line provided after the word "Dated."

18. The voting person's name should be printed or typed on the line after the words "Print or type name." The voting person is asked to sign the ballot on the line provided after the word "Signature."

19. If the creditor or equity security holder entitled to vote on the plan is a corporation or partnership, the title of the person casting the ballot on behalf of the corporation or partnership should be inserted on the "title" line. The appropriate address should be placed in the space provided after the word "Address."

20. The proponent should specify the name and address to which the ballot should be returned.

21. After completing the ballot, the person voting on the plan should mail the ballot to the address specified. The date set by the court as the deadline for returning the ballot is stated on the first page of the form.

Advisory Committee Note

This form is derived from former Official Form No. 30. The form has been amended to facilitate the voting of a debtor's shares held in "street name." The form may be adapted to designate the class in which each ballot is to be tabulated. It is intended that a separate ballot will be provided for each class in which a holder may vote.

Advisory Committee Note to 1997 Amendment

The form has been substantially amended to simplify its format and make it easier to complete correctly.

Directions or blanks for proponent to complete the text of the ballot are in italics and enclosed within brackets. A ballot should include only the applicable language from the alternatives shown on this form and should be adapted to the particular requirements of the case.

If the plan provides for creditors in a class to have the right to reduce their claims so as to qualify for treatment given to creditors whose claims do not exceed a specified amount, the ballot should make provisions for the exercise of that right. See section 1122(b) of the Code.

If debt or equity securities are held in the name of a broker/dealer or nominee, the ballot should require the furnishing of sufficient information to assure that duplicate ballots are not submitted and counted and that ballots submitted by a broker/dealer or nominee reflect the votes of the beneficial holders of such securities. See Rule 3017(e).

In the event that more than one plan of reorganization is to be voted upon, the form of ballot will need to be adapted to permit holders of claims or equity interests (a) to accept or reject each plan being proposed, and (b) to indicate preferences among the competing plans. See section 1129(c) of the Code.

Form 15

ORDER CONFIRMING PLAN

Official Form 15
6/90

UNITED STATES BANKRUPTCY COURT
DISTRICT OF _____

In re _____,)
[Set forth here all names including married,)
maiden, and trade names used by debtor within)
last 6 years.])
Debtor) Case No. _____)
Address _____)
_____)
_____) Chapter 11)
Social Security No(s). _____)
Employer's Tax Identification No(s). *[if any]* _____)
_____)

[Designation of Character of Paper]

ORDER CONFIRMING PLAN

The plan under chapter 11 of the Bankruptcy Code filed by _____, on _____ [if applicable, as modified by a modification filed on _____,] or a summary thereof, having been transmitted to creditors and equity security holders; and

It having been determined after hearing on notice that the requirements for confirmation set forth in 11 U.S.C. § 1129(a) [or, if appropriate, 11 U.S.C. § 1129(b)] have been satisfied;

IT IS ORDERED that:

The plan filed by _____, on _____, [If appropriate, include dates and any other pertinent details of modifications to the plan] is confirmed. A copy of the confirmed plan is attached.

Dated: _____

BY THE COURT

United States Bankruptcy Judge

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 15**ORDER CONFIRMING PLAN****I. INTRODUCTION**

Official Form 16 is used in chapter 11 cases to confirm a plan of reorganization. This form, while legally sufficient for its purpose is often simply a starting point for the drafting of a longer order containing additional provisions applicable to the particular case. Although issued in the name of the court, the Order Confirming Plan normally will be drafted by the attorney for the debtor or other plan proponent. The additional provisions in a proposed confirmation order are subject to objection and may be the focus of extensive negotiation among the parties in interest. All provisions in the order also are further subject to approval by the judge.

II. APPLICABLE LAW AND RULES

The Bankruptcy Code requires the court, after notice, to hold a hearing on the confirmation of a plan. 11 U.S.C. § 1128. At or after the confirmation hearing, the court may confirm the plan and thereby make it binding on all creditors and equity security holders, if it is accepted by the holders of two-thirds in amount and more than one-half in number of claims in each class of creditors and the holders of two-thirds in amount of equity security interests in each class voting on the plan. Before confirmation can be granted, the court also must be satisfied that there has been compliance with the other requirements of confirmation set forth in section 1129 of the Code, even in the absence of any objections. In order to confirm the plan, the court must find that the plan is feasible, is proposed in good faith, and that the plan and the proponent of the plan are in compliance with the Code. In addition, the court must find the confirmation of the plan is not likely to be followed by liquidation or the need for further financial reorganization, unless it is proposed in the plan. 11 U.S.C. § 1129(a)(11). For a complete list of requirements for confirmation of a plan, parties in interest may refer to section 1129 of the Code.

In the event the required acceptances are not obtained, the court may nevertheless confirm the plan if the court finds that the plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of section 1129(b) of the Code. This procedure is sometimes referred to as a “cramdown.”

Upon confirming a plan of reorganization, the court will enter an order of confirmation. The order of confirmation must conform to the Official Form. Rule 3020(c) of the Federal Rules of Bankruptcy Procedure (referred to as “Bankruptcy Rule” or “Fed. R. Bankr. P.”) The order and notice of the entry of the order must be mailed to the debtor, the trustee, creditors, equity security holders, other parties in interest, and (in chapter 11 cases) the United States trustee. Fed. R. Bankr. P. 2002(f), 2002(k), 3020(c).

After the entry of the order of confirmation, the court may issue any other order necessary to administer the estate. Fed. R. Bankr. P. 3020(d).

Under section 1141(a) of the Code, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor. Although certain exceptions listed in subsections 1141(d)(2) and (d)(3) apply, the general rule is that a confirmed plan binds all such entities, regardless of whether their claims or interests are impaired or whether those entities have accepted the plan. 11 U.S.C. § 1141(a).

All property of the estate vests in the debtor upon confirmation of the plan, unless the plan or order confirming the plan states otherwise. 11 U.S.C. § 1141(b). Moreover,

property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor, with some exceptions provided by subsections 1141(d)(2) and (d)(3). 11 U.S.C. § 1141(c).

Unless the plan or order confirming the plan states otherwise, the confirmation of a plan discharges the debtor from any debt that arose before the confirmation of the plan and any debt specified under section 502(g), (h), or (I). 11 U.S.C. § 1141(d)(1)(A). Moreover, the confirmation terminates the rights and interests of equity security holders and general partners provided for by the plan. 11 U.S.C. § 1141(d)(1)(B).

The confirmation of a plan does not discharge an individual debtor from any debt excepted from discharge under section 523 of the Code. 11 U.S.C. § 1141(d)(2). In addition, confirmation does not discharge the debtor if the plan is a liquidating plan, the debtor does not engage in business after consummation of the plan, and the debtor would be denied a discharge under section 727(a) of the Code if the case were under chapter 7. 11 U.S.C. § 1141(d)(3). Finally, the court may approve a debtor's written waiver of the discharge that is executed by the debtor after the order for relief under chapter 11. 11 U.S.C. § 1141(d)(4).

In addition to the Bankruptcy Code and the Bankruptcy Rules, each district may have local bankruptcy court rules that may contain further requirements. Local rules may be obtained at the bankruptcy clerk's office, or, in many districts, from the court's Internet website.

III. DIRECTIONS

1. The Official Form should be used with alterations as may be appropriate. Fed. R. Bankr. P. 9009. This form may be adapted for use in the case of an individual chapter 11 debtor together with Official Form 18, Discharge of Debtor. As stated above, in most cases an order confirming a plan will contain additional provisions applicable to the particular case.

2. The caption should be placed at the top of the page and should be in conformance with Official Form 16A. Instructions for Official Form 16A, Caption (Full), may be found following that form.

3. A person who files a disclosure statement and plan of reorganization is referred to below as a "plan proponent" or "proponent of a plan."

4. The plan proponent should place the proponent's name on the first line after the words "filed by."

5. The plan proponent should state the date the plan was filed with the court on the second line after the word "on."

6. If appropriate, the date that any modification to a plan was filed should appear in the blank space after the words "modification filed on."

After the phrase, "IT IS ORDERED that:"

7. The plan proponent should place the proponent's name on the first line after the words "filed by."

8. The plan proponent should place the date the plan was filed with the court in the blank space after the word "on." If appropriate, the date that any modification to a plan was filed and any pertinent details of modifications to the plan should appear after the date the plan was filed.

9. The date that the judge signs the order should be stated after the word "Dated." The bankruptcy judge's signature should appear on the signature line.

10. The Order Confirming Plan must be filed and a copy mailed to those parties in interest specified in Bankruptcy Rule 3020(c), discussed above. A copy of the confirmed plan should be attached.

Advisory Committee Note

This form is derived from former Official Form No. 31. The form has been simplified to avoid the necessity of repeating the statutory requirements of 11 U.S.C. § 1129(a). In the case of an individual chapter 11 debtor, Form 18 may be adapted for use together with this form.

INSTRUCTIONS FOR COMPLETING OFFICIAL FORMS 16A-16D

CAPTIONS

INTRODUCTION

There are four forms of caption, each designed for use in a different circumstance. Briefly, Official Form 16A provides a “full” caption that should be used when a party in a bankruptcy case initiates a matter that is not an adversary proceeding (explained below). Official Form 16B provides a “short title” caption that can be used when the full caption is not necessary. Official Form 16C is a caption for a complaint in an adversary proceeding initiated by a debtor. Official Form 16D is a caption for all other papers involving an adversary proceeding, including a complaint when the adversary proceeding is initiated by a creditor or other party who is not the debtor. (An adversary proceeding is the equivalent of a lawsuit within the bankruptcy case; Federal Rule of Bankruptcy Procedure 7001 lists the kinds of actions for which an adversary proceeding is required.)

The caption should appear at the top of the first page of any document that is filed in the case. Certain official forms already contain a caption form or an adaptation of a caption form. Accordingly, no separate caption need be prepared for the petitions, schedules, or statement of financial affairs.

Form 16A

CAPTION (FULL)

Official Form 16A
6/90

UNITED STATES BANKRUPTCY COURT
DISTRICT OF _____

In re _____,)
[Set forth here all names including married,)
maiden, and trade names used by debtor within)
last 6 years.])
Debtor) Case No. _____
))
Address _____)
_____) Chapter _____
))
Social Security No(s). _____ and all)
Employer's Tax Identification No(s). *[if any]* _____)
))

[Designation of Character of Paper]

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 16A

CAPTION (FULL)

I. INTRODUCTION

Official Form 16A, the full caption form, illustrates the format in which all the required information should be presented. This form of caption maybe used for every type of paper except an adversary proceeding.

II. APPLICABLE LAW AND RULES

Federal Rule of Bankruptcy Procedure (usually referred to as "Bankruptcy Rule" or "Fed. R. Bankr. P.") 9004(b) requires every paper filed in a bankruptcy case to contain a caption. The caption must state the name of the court, the title of the case, the bankruptcy case number, and a brief description of the paper being filed. Fed. R. Bankr. P. 9004(b). The title of the case includes the name, social security number or taxpayer identification number of the debtor, and all other names used by the debtor within six years of filing the petition. Fed. R. Bankr. P. 1005.

Section 342(c) of the Bankruptcy Code requires any notices given by a debtor to a creditor to contain the debtor's address and taxpayer identification number. Often, a copy of a motion or other paper is used as notice of the filing of the motion or other document, or may be attached to a separate notice. Official Form 16A satisfies the requirements under section 342(c) for a notice given by a debtor.

III. DIRECTIONS

1. After the words, "United States Bankruptcy Court," the name of the federal judicial district in the which the particular bankruptcy court is located should be inserted. Some districts include an entire state, and their names should be written as follows: "District of Utah." Other districts comprise only part of a state and should be written as follows: "Eastern District of Tennessee."

2. Following the words "In re," all names used by the debtor or joint debtors in the six years prior to the filing of the case should be stated. This includes married, maiden, and trade names. A creditor intending to file a paper using this caption form can obtain the debtor's full list of names from a copy of the petition or from the "Notice of Commencement of Case ... Meeting of Creditors, and Fixing Dates" (sometimes referred to as a "section 341 notice") that was mailed to creditors at the beginning of the case.

3. The list of the debtor's or joint debtors' names should be followed by the designation "Debtor."

4. The debtor's address, including zip code, should be stated in the spaces provided. A creditor can obtain the debtor's address from the "Notice of Commencement of Case ... Meeting of Creditors, and Fixing Dates" (sometimes referred to as a "section 341 notice") that was mailed to creditors at the beginning of the case.

5. The debtor's Social Security number(s) and any taxpayer identification number(s) should be inserted in the spaces provided. A creditor can obtain this information from the "Notice of Commencement of Case ... Meeting of Creditors, and Fixing Dates" (sometimes referred to as a "section 341 notice") that was mailed to creditors at the beginning of the case, from the court docket, or from the clerk's office.

6. The case number should be stated in the space provided. The case number will be assigned by the clerk's office when the petition is filed; it also appears on the "Notice of Commencement of Case ... Meeting of Creditors, and Fixing Dates" mailed to creditors at the beginning of the case.

7. The chapter number to be inserted in the space provided is the chapter of the Bankruptcy Code under which the case is proceeding at the time the paper is filed. A bankruptcy case can be filed under one chapter, but converted to a different chapter later in the case. If a case has been converted, the court will have sent notice of that fact.

8. The designation of the character of the paper should be brief. Most papers on which a caption must appear are either motions or responses to motions. Some examples are "MOTION TO EXTEND TIME TO FILE CHAPTER 13 PLAN," or "ANSWER TO MOTION FOR RELIEF FROM STAY." The designation or title of the paper should be written in all capital letters. For clarity, the designation or title may include a reference to who filed it, for example, "DEBTOR'S MOTION TO..."

9. Some courts may have local requirements for additional information that must be provided as part of the caption. Some of the more frequent local requirements are to state the name of the judge to whom the case or matter is assigned and for an attorney to state the attorney's name and state bar number or other identification number. Anyone planning to file a motion or other paper in a bankruptcy case should check with the clerk's office at the bankruptcy court concerning local requirements.

10. Once the caption is complete, the text of the paper to be filed should begin.

Advisory Committee Note

This form has been transferred from former Official Form No. 1, which included the form of caption for the case. Rule 9004(b) requires a caption to set forth the title of the case. Rule 1005 provides that the title of the case shall include the debtor's name, all other names used by the debtor within six years before the commencement of the case, and the debtor's social security and tax identification numbers. This form of caption is prescribed for use on the petition, the notice of the meeting of creditors, the order of discharge, and the documents relating to a chapter 11 plan, (Official Forms 1, 9, 12, 13, 14, 15, and 18). See Rule 2002(m). In the petition, (Official Form 1), and the notice of the meeting of creditors, (Official Form 9), the information required by Rule 1005 appears in a block format. A notation of the chapter of the Bankruptcy Code under which the case is proceeding has been added to the form.

Advisory Committee Note to 1995 Amendment

The form is amended to provide for the debtor's address to appear in the caption in furtherance of the duty of the debtor to include this information on every notice given by the debtor. The Bankruptcy Reform Act of 1994 amended section 342 of the Code to add this requirement.

Form 16B

CAPTION (SHORT TITLE)

(May be used if 11 U.S.C. § 342(c) is not applicable)

Official Form 16B
12/94

UNITED STATES BANKRUPTCY COURT
____ DISTRICT OF _____

In re _____,
Debtor

Case No. _____
Chapter _____

[Designation of Character of Paper]

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 16B**CAPTION (SHORT TITLE)****I. INTRODUCTION**

This “short title” caption may be used when the paper to be filed is not part of an adversary proceeding, and the notice requirement under section 342(c) of the Bankruptcy Code does not apply. Examples of papers on which the short title caption would be appropriate would be most motions filed by a creditor or by a trustee. Additional names, such as any under which the debtor has engaged in business, can be added as appropriate.

II. APPLICABLE LAW AND RULES

Federal Rule of Bankruptcy Procedure (usually referred to as “Bankruptcy Rule” or “Fed. R. Bankr. P.”) 9004(b) requires every paper filed in a bankruptcy case to contain a caption. The caption must state the name of the court, the title of the case, the bankruptcy case number, and a brief description of the paper being filed. Fed. R. Bankr. P. 9004(b). The title of the case includes the name, social security number or taxpayer identification number of the debtor, and all other names used by the debtor within six years of filing the petition. Fed. R. Bankr. P. 1005.

Several of the official forms either contain a caption or request all the information contained in a caption. Accordingly, no separate caption need be prepared for these papers. All of the other official forms specify the form of caption required. For many papers filed in a case, the one or two names used most frequently by the debtor(s) are sufficient to identify the case and serve as the title. These can be supplemented as appropriate for the particular paper.

III. DIRECTIONS

1. After the words, “United States Bankruptcy Court,” the name of the federal judicial district in the which the particular bankruptcy court is located should be inserted. Some districts include an entire state, and their names should be written as follows: “District of Utah.” Other districts comprise only part of a state and should be written as follows: “Eastern District of Tennessee.”

2. Following the words “In re,” the name(s) of the debtor or joint debtors should be stated. A creditor intending to file a paper can obtain the debtor’s full list of names from a copy of the petition or from the “Notice of Commencement of Case . . . Meeting of Creditors, and Fixing Dates” (sometimes referred to as a “section 341 notice”) that was mailed to creditors at the at the beginning of the case.

3. The list of the debtor’s or joint debtors’ names should be followed by the designation “Debtor.”

4. The case number should be stated in the space provided. The case number will be assigned by the clerk’s office when the petition is filed; it also appears on the “Notice of Commencement of Case . . . Meeting of Creditors, and Fixing Dates” mailed to creditors at the beginning of the case.

5. The chapter number to be inserted in the space provided is the chapter of the Bankruptcy Code under which the case is proceeding at the time the paper is filed. A bankruptcy case can be filed under one chapter, but converted to a different chapter later in the case. If a case has been converted, the court will have sent notice of that fact.

6. The designation of the character of the paper should be brief. Most papers on which a caption must appear are either motions or responses to motions. Some

examples are "MOTION TO EXTEND TIME TO FILE CHAPTER 13 PLAN," or "ANSWER TO MOTION FOR RELIEF FROM STAY." The designation or title of the paper should be written in all capital letters. For clarity, the designation or title may include a reference to who filed it, for example, "DEBTOR'S MOTION TO..."

7. Some courts may have local requirements for additional information that must be provided as part of the caption. Some of the more frequent local requirements are to state the name of the judge to whom the case or matter is assigned and for an attorney to state the attorney's name and state bar number or other identification number. Anyone planning to file a motion or other paper in a bankruptcy case should check with the clerk's office at the bankruptcy court concerning local requirements.

8. Once the caption is complete, the text of the paper to be filed should begin.

Advisory Committee Note

This form of caption is prescribed for general use in filing papers in a case under the Bankruptcy Code. Rule 9004(b) requires a caption to set forth the title of the case, and Rule 1005 specifies that the title must include all names used by the debtor within six years before the commencement of the case and the debtor's social security and tax identification numbers. This information is necessary in the petition, the notice of the meeting of creditors, the order of discharge, and the documents relating to the plan in a chapter 11 case. See Rule 2002(m) and Official Form 16A. In other notices, motions, applications, and papers filed in a case, however, a short title containing simply the name of the debtor or joint debtors may be used. Additional names, such as any under which the debtor has engaged in business, may be included in the short title as needed.

Advisory Committee Note to 1995 Amendment

The title of this form is amended to specify that it can be used when section 342(c) of the Code, as added by the Bankruptcy Reform Act of 1994, is not applicable.

Form 16C

CAPTION OF COMPLAINT IN ADVERSARY
PROCEEDING FILED BY A DEBTOR

Official Form 16C
12-94

UNITED STATES BANKRUPTCY COURT
DISTRICT OF

In re)	
	Debtor)	Case No.
Address)	Chapter
)	
)	
Social Security No(s).)	or
Employer's Tax Identification No(s).	[if any])	
)	
)	
	Plaintiff)	
)	
	v.)	
)	
)	
)	Adv.Proc. No.
	Defendant)	

COMPLAINT

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 16C**CAPTION OF COMPLAINT IN AN ADVERSARY
PROCEEDING FILED BY A DEBTOR****I. INTRODUCTION**

An adversary proceeding is the equivalent of a lawsuit within the bankruptcy case. A caption for an adversary proceeding contains both the caption for the overall bankruptcy case and an adaptation of a caption for a civil action (lawsuit) in which the parties are designated as "plaintiff" and "defendant."

Together, the summons and complaint function as notice to the defendant of the filing of the adversary proceeding. Section 342(c) of the Bankruptcy Code requires a debtor to provide additional information on any notice sent by the debtor to a creditor. This Official Form 16C, which includes this additional information, is to be used when the party filing an adversary proceeding is the debtor. Official Form 16D, instructions for which appear following that form, should be used for all other documents in an adversary proceeding, including a complaint filed by any party other than the debtor.

II. APPLICABLE LAW AND RULES

A party who wants to start an adversary proceeding must file a "complaint" with the clerk of the bankruptcy court explaining why the plaintiff (the person who files the adversary proceeding) is entitled to the money or other relief sought from the defendant (the person being sued). Rule 7003 of the Federal Rules of Bankruptcy Procedure (referred to as "Bankruptcy Rule" or "Fed. R. Bankr. P."), incorporating by reference Rule 3 of the Federal Rules of Civil Procedure. The complaint shall contain a short and plain statement of the facts which entitle the plaintiff to relief. Fed. R. Bankr. P. 7008(a), incorporating by reference Fed. R. Civ. P. 8(a).

Bankruptcy Rule 7001 lists the kinds of actions for which an adversary proceeding is required. Bankruptcy Rule 7010 directs the parties to use an official form of caption in an adversary proceeding. Bankruptcy Rule 7004 requires a plaintiff to serve on each defendant a copy of the complaint along with another document called a summons.

Section 342(c) of the Bankruptcy Code requires the debtor's address and taxpayer identification number to appear on any notice sent by a debtor to a creditor. As the summons and complaint function together as notice to the defendant of the filing of the adversary proceeding, this form of caption requires a debtor who files an adversary proceeding to provide the information specified by section 342(c) of the Bankruptcy Code as necessary in a notice given by a debtor.

III. DIRECTIONS

1. After the words, "United States Bankruptcy Court," the name of the federal judicial district in the which the particular bankruptcy court is located should be inserted. Some districts include an entire state, and their names should be written as follows: "District of Utah." Other districts comprise only part of a state and should be written as follows: "Eastern District of Tennessee."

2. Following the words "In re," all names used by the debtor or joint debtors in the six years prior to the filing of the case should be stated. This includes married, maiden, and trade names.

3. The list of the debtor's or joint debtors' names should be followed by the designation "Debtor."

4. The debtor's address, including zip code, should be stated in the spaces provided.

5. The debtor's Social Security number(s) and any taxpayer identification number(s) should be inserted in the spaces provided.

6. The case number should be stated in the space provided. The case number will be assigned by the clerk's office when the petition is filed; it also appears on the "Notice of Commencement of Case . . . Meeting of Creditors, and Fixing Dates" mailed to the debtor, creditors, and other parties at the beginning of the case.

7. The chapter number to be inserted in the space provided is the chapter of the Bankruptcy Code under which the case is proceeding at the time the paper is filed. A bankruptcy case can be filed under one chapter, but converted to a different chapter later in the case. If a case has been converted, the court will have sent notice of that fact.

8. The name of the party filing the complaint should be inserted in the space provided, followed by the designation "Plaintiff."

9. The name(s) of the party or parties against whom the adversary proceeding is directed should be inserted in the space provided, followed by the designation "Defendant" or "Defendants."

10. The adversary proceeding number will be assigned by the clerk's office when the adversary proceeding is filed.

11. The title "COMPLAINT" should appear in all capital letters. A brief description of the action being initiated by the complaint can be added. A description of a commonly filed complaint would be "COMPLAINT UNDER § 523(c) OF THE BANKRUPTCY CODE TO DETERMINE THE DISCHARGEABILITY OF A DEBT."

12. Some courts may have local requirements for additional information that must be provided as part of the caption. Some of the more frequent local requirements are to state the name of the judge to whom the case or matter is assigned and for an attorney to state the attorney's name and state bar number or other identification number. Anyone planning to file a motion or other paper in a bankruptcy case should check with the clerk's office at the bankruptcy court concerning local requirements.

13. Once the caption is complete, the text of the paper to be filed should begin.

14. Copies of the various forms of a summons and instructions for completing them can be found in Part II of this Manual.*

Advisory Committee Note

This form previously was numbered Official Form No. 34. A notation of the chapter of the Bankruptcy Code under which the case is proceeding has been added to the form. Rule 7010 refers to this form as providing the caption of a pleading in an adversary proceeding.

Advisory Committee Note to 1995 Amendment

The form is amended to conform to the amendments made to section 342 of the Code by the Bankruptcy Reform Act of 1994.

* Reference is to the *Bankruptcy Forms Manual*, as issued by the Division of Bankruptcy, Administrative Office of the United States Courts (2000).

Form 16D

**CAPTION FOR USE IN ADVERSARY PROCEEDING OTHER
THAN FOR A COMPLAINT FILED BY A DEBTOR**

Official Form 16D
12/94

**UNITED STATES BANKRUPTCY COURT
_____ DISTRICT OF _____**

In re _____,)	
<i>Debtor</i>)	Case No. _____
)	
_____,)	Chapter _____
<i>Plaintiff</i>)	
)	
v.)	
)	
_____,)	Adv. Proc. No. _____
<i>Defendant</i>)	

COMPLAINT [*or* other Designation]

[If used in a Notice of Appeal (see Form 17) or other notice filed and served by a debtor, this caption must be altered to include the debtor's address and Employer's Tax Identification Number(s) or Social Security Number(s) as in Form 16C.]

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 16 D
CAPTION FOR USE IN ADVERSARY PROCEEDING OTHER
THAN FOR A COMPLAINT FILED BY A DEBTOR

I. INTRODUCTION

An adversary proceeding is the equivalent of a lawsuit within the bankruptcy case. A caption for an adversary proceeding contains both the caption for the overall bankruptcy case and an adaptation of a caption for a civil action (lawsuit) in which the parties are designated as "plaintiff" and "defendant."

Together, the summons and complaint function as notice to the defendant of the filing of the adversary proceeding. Section 342(c) of the Bankruptcy Code requires a debtor to provide additional information on any notice sent by the debtor to a creditor. Official Form 16C, which includes this additional information, is to be used when the party filing an adversary proceeding is the debtor. Instructions for completing Official Form 16C appear following that form. This form, Official Form 16D, should be used for all other documents in an adversary proceeding, including a complaint filed by any party other than the debtor.

II. APPLICABLE LAW AND RULES

A party who wants to start an adversary proceeding must file a "complaint" with the clerk of the bankruptcy court explaining why the plaintiff (the person who files the adversary proceeding) is entitled to the money or other relief sought from the defendant (the person being sued). Rule 7003 of the Federal Rules of Bankruptcy Procedure (referred to as "Bankruptcy Rule" or "Fed. R. Bankr. P."), incorporating by reference Rule 3 of the Federal Rules of Civil Procedure. The complaint shall contain a short and plain statement of the facts which entitle the plaintiff to relief. Fed. R. Bankr. P. 7008(a), incorporating by reference Fed. R. Civ. P. 8(a).

Bankruptcy Rule 7001 lists the kinds of actions for which an adversary proceeding is required. Bankruptcy Rule 7010 directs the parties to use an official form of caption in an adversary proceeding. Bankruptcy Rule 7004 requires a plaintiff to serve on each defendant a copy of the complaint along with another document called a summons.

III. DIRECTIONS

1. After the words, "United States Bankruptcy Court," the name of the federal judicial district in the which the particular bankruptcy court is located should be inserted. Some districts include an entire state, and their names should be written as follows: "District of Utah." Other districts comprise only part of a state and should be written as follows: "Eastern District of Tennessee."

2. Following the words "In re," the debtor's or the joint debtors' names should be inserted in the space provided.

3. The debtor's or the joint debtors' names should be followed by the designation "Debtor."

4. The case number should be stated in the space provided. The case number will be assigned by the clerk's office when the petition is filed; it also appears on the "Notice of Commencement of Case . . . Meeting of Creditors, and Fixing Dates" mailed to creditors at the beginning of the case.

5. The chapter number to be inserted in the space provided is the chapter of the Bankruptcy Code under which the case is proceeding at the time the paper is filed. A bankruptcy case can be filed under one chapter, but converted to a different chapter

later in the case. If a case has been converted, the court will have sent notice of that fact.

6. The name of the party filing the complaint should be inserted in the space provided, followed by the designation "Plaintiff."

7. The name(s) of the party or parties against whom the adversary proceeding is directed should be inserted in the space provided, followed by the designation "Defendant" or "Defendants."

8. The adversary proceeding number will be assigned by the clerk's office by the clerk's office when the adversary proceeding is filed.

9. The title "COMPLAINT" should appear in all capital letters. A brief description of the action being initiated by the complaint can be added. A description of a commonly filed complaint would be "COMPLAINT UNDER § 523(c) OF THE BANKRUPTCY CODE TO DETERMINE THE DISCHARGEABILITY OF A DEBT."

10. Some courts may have local requirements for additional information that must be provided as part of the caption. Some of the more frequent local requirements are to state the name of the judge to whom the case or matter is assigned and for an attorney to state the attorney's name and state bar number or other identification number. Anyone planning to file a motion or other paper in a bankruptcy case should check with the clerk's office at the bankruptcy court concerning local requirements.

11. Once the caption is complete, the text of the paper to be filed should begin.

12. Copies of the various forms of a summons and instructions for completing them can be found in Part II of this Manual.*

Advisory Committee Note to 1995 Amendment

This form of caption may be used in an adversary proceeding when section 342(c) of the Code, as added by the Bankruptcy Reform Act of 1994, is not applicable.

* Reference is to the *Bankruptcy Forms Manual*, as issued by the Division of Bankruptcy, Administrative Office of the United States Courts (2000).

Form 17

**NOTICE OF APPEAL UNDER 28 U.S.C. § 158(a) or (b)
FROM A JUDGMENT, ORDER, OR DECREE OF A
BANKRUPTCY COURT**

Official Form 17
(9/97)

United States Bankruptcy Court

_____ District Of _____

In re _____,
Debtor

Case No. _____

Chapter _____

[Caption as in Form 16A, 16B, 16C, or 16D, as appropriate]

NOTICE OF APPEAL

_____, the plaintiff *[or defendant or other party]* appeals under 28 U.S.C. § 158(a) or (b) from the judgment, order, or decree of the bankruptcy judge (describe) entered in this adversary proceeding *[or other proceeding, describe type]* on the _____ day of _____ (month) (year).

The names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys are as follows:

Dated: _____

Signed: _____
Attorney for Appellant (or Appellant, if not represented by
an Attorney)

Attorney Name: _____

Address: _____

Telephone No: _____

If a Bankruptcy Appellate Panel Service is authorized to hear this appeal, each party has a right to have the appeal heard by the district court. The appellant may exercise this right only by filing a separate statement of election at the time of the filing of this notice of appeal. Any other party may elect, within the time provided in 28 U.S.C. § 158(c), to have the appeal heard by the district court.

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 17**NOTICE OF APPEAL UNDER 28 U.S.C. § 158(a) or (b)
FROM A JUDGMENT, ORDER, OR DECREE OF A
BANKRUPTCY COURT****I. INTRODUCTION**

A party in a bankruptcy case who thinks the judge has decided a matter incorrectly has a right to appeal any final judgment, order, or decree of the judge. When a matter is appealed, another judge, or a group of three judges, will review the original judge's ruling. The first step in exercising this right to have the original decision reexamined is the filing of a notice of appeal.

II. APPLICABLE LAW AND RULES

Appeals in bankruptcy cases are governed by section 158 of title 28, United States Code (the Judicial Code), and by Part VIII of the Federal Rules of Bankruptcy Procedure (referred to as "Bankruptcy Rules" or "Fed. R. Bankr. P."). Section 158 of title 28 establishes two paths for appeal in bankruptcy cases. If the federal judicial circuit in which the bankruptcy court is located has established a bankruptcy appellate panel (BAP), an appeal may be considered and ruled on by a BAP composed of three bankruptcy judges from districts other than the one in which the appeal originated. 28 U.S.C. § 158(b). If the circuit has no BAP, an appeal will go to a federal district court judge in the district in which the bankruptcy court is located, 28 U.S.C. § 158(a).

If there is a BAP, but the appellant (the party filing the appeal) or any other party wants the appeal decided by a United States district court judge, the party has the right to have the appeal heard by a district judge, rather than the BAP. 28 U.S.C. § 158(c). The appellant can exercise this right only by filing a separate statement of election at the time of filing the notice of appeal. 28 U.S.C. § 158(c)(1). Any other party can exercise the right to elect district court consideration of the appeal by filing a separate statement of election within 30 days after service of the notice of appeal. 28 U.S.C. § 158(c)(1).

There is a right to appeal only a "final" judgment, order, or decree. 28 U.S.C. § 158(a)(1). This is a legal concept that means a judgment, order, or decree finally disposing of the matter before the court. All other orders and decrees in the case are called "interlocutory." Most orders in a bankruptcy case are interlocutory. If a party wants to appeal an interlocutory order, the party must first obtain permission from the appellate court. 28 U.S.C. § 158(a)(3). To request this permission, the party must file a notice of appeal together with a motion for leave to appeal explaining why the appeal should be considered at the current stage in the case rather than waiting until there is a "final" order. Fed. R. Bankr. P. 8001(b), 8003.

One kind of interlocutory order, however, is immediately appealable. Under 28 U.S.C. § 158(a)(2), which was enacted in 1994, there is a right to immediate appeal of any order issued in a chapter 11 case extending or reducing the time period during which only the debtor has a right to file a plan of reorganization—often referred to as an "exclusivity order."

The notice of appeal must be filed within 10 days of the date of the entry on the docket of the judgment, order, or decree appealed from. Fed. R. Bankr. P. 8002(a). The docket is the official record maintained by the clerk of documents filed, actions taken, and judgments and orders signed in the case. Fed. R. Bankr. P. 5003(a). After the judge has signed an order, it goes to the clerk's office to be entered on the docket. Fed. R. Bankr. P. 9021. Bankruptcy Rule 5003(a) also specifies that the docket must contain a notation of the date of entry of every judgment or order. Bankruptcy Rule 9022

requires the clerk to give notice to the parties of the entry of a judgment or order; however, the ten day period for filing a notice of appeal will run from the date of entry, even if the clerk fails to perform this noticing duty. Under some circumstances the court may grant an extension of the time for filing a notice of appeal. Fed. R. Bankr. P. 8002(c).

After the court has issued a judgment or order in a proceeding, a party may file a motion requesting the judge to alter or amend the ruling. When such a motion is filed, it interrupts the running of the 10 day period for filing an appeal until the entry on the docket of the order disposing of the last such motion to be ruled on. Fed. R. Bankr. P. 8002(b). A notice of appeal may have been filed before any motion was filed and may be filed during the pendency of a motion to alter or amend the Judgment. Such a notice of appeal, however, does not become effective until the entry of the order disposing of the last outstanding motion, at which time the notice of appeal is deemed filed after such entry and on the same day. Fed. R. Bankr. P. 8002(a) and (b). A party that already has filed a notice of appeal, prior to disposition of a motion regarding the judgment or order has a duty to amend the previously filed notice of appeal. Fed. R. Bankr. P. 8002(b). A party that wants to challenge any amendment or alteration of the judgment that may have been granted as a result of a post-judgment motion must file a notice of appeal within ten days of the entry of the order altering or amending the judgment. Fed. R. Bankr. P. 8002(b).

The filing of a notice of appeal does not stay the effect of the original order or judgment. A stay must be requested by a separate motion. Fed. R. Bankr. P. 8005. Certain judgments, however, can not be enforced for 10 days. Fed. R. Bankr. P. 7062.

The clerk is required to charge a fee for filing a notice of appeal. 28 U.S.C. § 1930(c). As of August 1, 1999, the fee was \$5. There also is an appeal docketing fee which is collected at the time the notice of appeal is filed. Item No. 16, Bankruptcy Court Miscellaneous Fee Schedule. (The Bankruptcy Court Miscellaneous Fee Schedule is prescribed by the Judicial Conference of the United States under authority granted in 28 U.S.C. § 1930(b).) As of August 1, 1999, the fee was \$100.

III. DIRECTIONS

1. The Official Form should be used with alterations as may be appropriate. Fed. R. Bankr. P. 9009. The form will require retyping in order to insert all the required information. The form may be adapted for use by multiple parties who file a joint notice of appeal.

2. The caption should be placed at the top of the page. The caption shown is Official Form 16B, Caption (Short Title). The party intending to file the notice of appeal, however, should choose the form of caption that is appropriate to the action, either an adversary proceeding (Caption Forms 16C or 16D) or a matter that arose in the main bankruptcy case (Caption Forms 16A or 16B).

3. The party intending to file the notice of appeal is referred to below as the "appellant."

4. The appellant's name should be inserted in the first blank space in the body of the notice.

5. Immediately following the comma after the appellant's name, the appellant should state the appellant's role in the role in the case (for example, "plaintiff," "defendant," "debtor," "creditor," etc.).

6. Immediately following the phrase "bankruptcy judge," the appellant should provide a brief description of the bankruptcy court order being appealed (for example, "Order Declaring Debt to Debtor's Former Spouse Nondischargeable").

7. Immediately following the phrase "entered in this," the appellant should state the type of proceeding in which the judgment, order, or decree appealed from was entered. For example, the proceeding may be an adversary proceeding, an objection to confirmation of a plan of reorganization, or an application for compensation.

8. The appellant should insert the day, month, and year the judgment, order, or decree was entered in the blanks provided (for example, the "14th day of December, 1998"). For example, the proceedings may be an adversary proceedings, an objection to confirmation of a plan of reorganization, or an application for compensation.

9. The appellant must list all parties to the appeal, including the appellant, with the names of their respective attorneys in the space provided.

10. The date the notice of appeal is signed should be inserted in the space provided.

11. The appellant's attorney must sign the notice of appeal in the space provided. If the appellant is not represented by an attorney, the appellant must sign and should identify the signature as that of the appellant.

12. The name and address of the person who signs of the notice of appeal, either the appellant's attorney or the appellant, as appropriate, should be inserted in the space provided. Include the person's telephone number in the space indicated.

13. If a bankruptcy appellate panel (BAP) is authorized to hear appeals in the district and the appellant wants to elect appeal to the district court instead, the appellant must file a separate, written statement of election with the notice of appeal.

Advisory Committee Note

This form is derived from former Official Form No. 35. The form has been amended to indicate that a final order may be entered other than in an adversary proceeding.

Advisory Committee Note to 1995 Amendment

The form is amended to reflect the amendments to 28 U.S.C. § 158 concerning bankruptcy appellate panels made by the Bankruptcy Reform Act of 1994. Section 158(d) requires an appellant who elects to appeal to a district court rather than a bankruptcy appellate panel to do so "at the time of filing the appeal."

The 1994 Act also amended 28 U.S.C. § 158(a) to permit immediate appeal of interlocutory orders increasing or reducing a chapter 11 debtor's exclusive period to file a plan under section 1121 of the Code. The form is amended to provide appropriate flexibility.

Advisory Committee Note to 1997 Amendment

The form has been amended to conform to Rule 8001(a), which requires the notice to contain the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys. A party filing a notice of appeal pro se should provide equivalent information.

Form 18

DISCHARGE OF DEBTOR IN A CHAPTER 7 CASE

Official Form 18
(9/97)

United States Bankruptcy Court

_____ District Of _____

In re _____)	
<i>Set forth here all names including married,</i>)	
<i>maiden, and trade names used by debtor within</i>)	
<i>last 6 years.]</i>)	
Debtor _____)	Case No. _____
)	
Address _____)	
_____)	Chapter 7
Social Security No(s): _____)	
Employer's Tax Identification No(s). <i>(if any)</i> . _____)	
_____)	

DISCHARGE OF DEBTOR

It appearing that the debtor is entitled to a discharge, **IT IS ORDERED:** The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

Dated: _____

BY THE COURT

United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

Official Form 18

EXPLANATION OF BANKRUPTCY DISCHARGE
IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. *[In a case involving community property.]* [There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts that are Not Discharged.

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts that are in the nature of alimony, maintenance, or support;
- c. Debts for most student loans;
- d. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- e. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle while intoxicated;
- f. Some debts which were not properly listed by the debtor;
- g. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- h. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 18

DISCHARGE OF DEBTOR

I. INTRODUCTION

The discharge is a court order that grants a discharge of debts to the person named as the debtor. This Official Form covers only an individual debtor in a chapter 7 case. There are other procedural forms issued by the Director of the Administrative Office of the United States Courts for use in cases filed by joint debtors (husband and wife filing together) and in chapter 12 and chapter 13 cases. These are illustrated in Part II of this Manual.*

The effect of a discharge order is to free the debtor of any personal liability for most debts that arose before the bankruptcy case was filed. It is not a dismissal of the case, and it does not determine how much money, if any, the trustee will pay to creditors.

The clerk will prepare the order of discharge in the case. These instructions are provided for the information and reference of parties in a bankruptcy case.

II. APPLICABLE LAW AND RULES

The chapter 7 discharge order eliminates a debtor's legal obligation to pay any debt that is discharged. Most, but not all, types of debts are discharged by law if the debt existed on the date the bankruptcy case was filed. 11 U.S.C. §§ 524, 727(b). (If the case began under a different chapter of the Bankruptcy Code and was converted to chapter 7, the discharge applies to debts that existed on the date the bankruptcy case was converted. See 11 U.S.C. §§ 348(d), 727(b).)

By law, the discharge prohibits any attempt to collect from the debtor a debt that has been discharged. 11 U.S.C. § 524(a)(2). For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. There are also special rules that may protect certain "community property" owned by the debtor's spouse, even if that spouse did not file a bankruptcy case. 11 U.S.C. § 524(a)(3). A creditor, however, may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. 11 U.S.C. § 362(c).

Even if a debt has been discharged by law, a debtor may still voluntarily choose to pay it. 11 U.S.C. § 524(f).

Although most of the debtor's debts are discharged, some types of debts are *not* discharged in a chapter 7 bankruptcy case. Some of the common types of debts that are not discharged are set out on the back of the discharge. The types of debts discharged in a chapter 12 or chapter 13 case vary somewhat from those discharged in a chapter 7 case. 11 U.S.C. §§ 1228, 1328.

This information is only a general summary of the bankruptcy discharge, and there are exceptions to these general rules. The law is complicated, so debtors and creditors may want to consult an attorney to determine the exact effect of the discharge in any particular case.

Federal Rule of Bankruptcy Procedure 4004(g) requires the clerk to send a copy of the discharge order to the debtor, all creditors, the United States trustee, the trustee, and the trustee's attorney, if any.

* Reference is to the *Bankruptcy Forms Manual*, as issued by the Division of Bankruptcy, Administrative Office of the United States Courts (2000).

III. DIRECTIONS

1. The Official Form should be used in a chapter 7 case in which the debtor is an individual. (The Director of the Administrative Office of the United States Courts has issued other procedural forms, which are adaptations of Official Form 18, for use in cases filed by joint debtors and in chapter 12 and chapter 13 cases. These appear in Part II of this Manual.)*

2. The caption of the discharge should conform to Official Form 16A. Instructions for Official Form 16A, Caption (Full), may be found following that form.

3. The date the court granted the discharge should be inserted in the space provided.

4. The signature of the bankruptcy judge should appear in the space provided.

5. The clerk will enter the discharge order on the bankruptcy case docket and mail a copy of the discharge order to the debtor, the trustee, the trustee's attorney (if any), the United States trustee, and all creditors.

Advisory Committee Note

This form previously was numbered Official Form No. 27. The form has been revised to accommodate cases commenced by the filing of either a voluntary or an involuntary petition.

Advisory Committee Note to 1995 Amendment

The form is amended to include debts described in section 523(a)(15) of the Code, which was added by the Bankruptcy Reform Act of 1994, in the list of debts discharged unless determined by the court to be nondischargeable.

Advisory Committee Note to 1997 Amendment

The discharge order has been simplified by deleting paragraphs which had detailed some, but not all, of the effects of the discharge. These paragraphs have been replaced with a plain English explanation of the discharge. This explanation is to be printed on the reverse of the order, to increase understanding of the bankruptcy discharge among creditors and debtors. The bracketed sentence in the second paragraph should be included when the case involves community property.

* Reference is to the *Bankruptcy Forms Manual*, as issued by the Division of Bankruptcy, Administrative Office of the United States Courts (2000).

Form 19**CERTIFICATION AND SIGNATURE OF NON-
ATTORNEY BANKRUPTCY PETITION
PREPARER (See 11 U.S.C. § 110)**Official Form 19
12/94**UNITED STATES BANKRUPTCY COURT
_____ DISTRICT OF _____**In re _____,
Debtor Case No. _____
Chapter _____

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed or Typed Name of Bankruptcy Petition Preparer_____
Social Security No._____
Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

X _____
Signature of Bankruptcy Petition Preparer Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 19**CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY
PETITION PREPARER (See 11 U.S.C. § 110)****I. INTRODUCTION**

Anyone—other than an attorney or an employee of an attorney—who accepts money or a promise of payment for preparing a bankruptcy petition, or any other document for filing by a debtor in a bankruptcy case, is a “bankruptcy petition preparer” under the Bankruptcy Code, 11 U.S.C. § 110(a).

Official Form 19 is a certification by a bankruptcy petition preparer that the preparer has complied with the provisions of section 110 of the Bankruptcy Code. The form or adaptations of it have been incorporated into the official forms that typically would be prepared for a debtor by a bankruptcy petition preparer: the voluntary petition, the schedules, the statement of financial affairs, and several others. Official Form 19, with the addition of the caption specified, should be used with any other document that a bankruptcy petition preparer types or otherwise prepares for filing by a debtor in a bankruptcy case.

II. APPLICABLE LAW AND RULES

The Bankruptcy Code defines a bankruptcy petition preparer as a person, other than an attorney or employee of an attorney, who prepares for compensation a petition or other document for filing by a debtor in a bankruptcy court or district court in connection with a bankruptcy case. 11 U.S.C. § 110(a). Section 110 requires a bankruptcy petition preparer to sign any document prepared and to print on the document the preparer’s name and address. 11 U.S.C. § 110(b)(1). A bankruptcy petition preparer must also place on the document, after the preparer’s signature, an identifying number or numbers for the preparer and each additional individual who assisted in preparing the document. 11 U.S.C. § 110(c)(1). Section 110 specifies that the identifying number or numbers are the Social Security number or numbers of the preparer and each additional individual who assisted in preparing the document. 11 U.S.C. § 110(c)(2). Section 110 further requires a bankruptcy petition preparer, not later than the time any document is presented to a debtor for the debtor’s signature, to provide the debtor with a copy of the document. 11 U.S.C. § 110(d)(1).

III. DIRECTIONS

1. This Official Form or adaptations of it have been incorporated into the official forms that typically would be prepared for a debtor by a bankruptcy petition preparer: the voluntary petition, the schedules, the statement of financial affairs, and several others. This form should be completed and attached to any other document prepared by a bankruptcy petition preparer for filing by a debtor in a bankruptcy case.

2. The caption should be placed at the top of the page and should conform to Official Form 16B. Instructions for Official Form 16B, Caption (Short Title), may be found following that form.

3. The Bankruptcy Code defines a bankruptcy petition preparer as any person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing by a debtor in a bankruptcy case.

4. The bankruptcy petition preparer should print or type the preparer’s name on the line provided. If the individual who prepared the document operates a service or is employed by a service, the names of both the service and the individual who prepared the document should appear.

5. The bankruptcy petition preparer should state the Social Security number of the individual who prepared the document on the line provided.
6. The bankruptcy petition preparer should state the preparer's address on the line provided.
7. If more than one individual worked on preparing the document for filing by the debtor, the name and Social Security number of each individual who prepared or assisted in preparing the document must be disclosed in the space provided.
8. The bankruptcy petition preparer must sign the certification form on the line provided.
9. The bankruptcy petition preparer must write the date the certification form was signed on the line provided,
10. If more than one person prepared the document for filing by the debtor, the bankruptcy petition preparer also must prepare an additional Official Form 19 for each person who participated in preparing the document for the debtor, and each additional form must be signed by the individual named on that form.
11. The completed and signed certification and all required attachments should be attached firmly to the document to be filed by the debtor in the bankruptcy case.

Advisory Committee Note to 1995 Amendment

This form is new. The Bankruptcy Reform Act of 1994 requires a "bankruptcy petition preparer," as defined in 11 U.S.C. § 110, to sign any "document for filing" that the bankruptcy petition preparer prepares for compensation on behalf of a debtor, to disclose on the document certain information, and to provide the debtor with a copy of the document. This form or adaptations of this form have been incorporated into the official forms of the voluntary petition, the schedules, the statement of financial affairs, and other official forms that typically would be prepared for a debtor by a bankruptcy petition preparer. This form is to be used in connection with any other document that a bankruptcy petition preparer prepares for filing by a debtor in a bankruptcy case.

Form 20A

NOTICE OF MOTION OR OBJECTION

Official Form 20A
(9/97)

United States Bankruptcy Court

____ District Of _____

In re _____

*Set forth here all names including married,
maiden, and trade names used by debtor within
last 6 years }*

Debtor

Case No. _____

Address _____

Chapter _____

Social Security No(s). _____

Employer's Tax Identification No(s). *[if any]* _____

NOTICE OF [MOTION TO] [OBJECTION TO]

_____ has filed papers with the court to [relief sought in motion or objection].

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to [relief sought in motion or objection], or if you want the court to consider your views on the [motion] [objection], then on or before (date), you or your attorney must:

[File with the court a written request for a hearing {or, if the court requires a written response, an answer, explaining your position} at:

{address of the bankruptcy clerk's office}

If you mail your {request} {response} to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

You must also mail a copy to:

{movant's attorney's name and address}

{names and addresses of others to be served}

[Attend the hearing scheduled to be held on (date), (year), at a.m./p.m. in Courtroom , United States Bankruptcy Court, {address}.]

[Other steps required to oppose a motion or objection under local rule or court order.]

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Date: _____

Signature: _____

Name: _____

Address: _____

NOTICE OF MOTION OR OBJECTION**I. INTRODUCTION**

Official Form 20A, Notice of Motion or Objection, is intended to provide uniform, plain English explanations to parties regarding what they must do to respond in certain contested matters which occur frequently in bankruptcy cases. Such explanations have been given better in some courts than in others. The form is intended to make bankruptcy proceedings more fair, equitable, and efficient, by aiding parties, who sometimes do not have counsel, in understanding the applicable rules.

The form is not intended to dictate the specific procedures to be used by different bankruptcy courts. The form contains optional language that can be used or adapted, depending on local procedures.

II. APPLICABLE LAW AND RULES

Rule 9014 of the Federal Rules of Bankruptcy Procedure (referred to as “Fed. R. Bankr. P.” or “Bankruptcy Rule”) requires that a person who asks that the court take certain types of action (which is referred to as requesting relief) must do so by filing a motion and giving the person against whom the relief is sought notice of the motion and an opportunity to respond. Examples of these contested matters include motions by creditors for relief from the automatic stay under Rule 4001(a), motions by debtors to avoid liens on exempt property under Rule 4003(d), and motions by trustees to assume, reject, or assign unexpired leases under Rule 6006(a). Form 20A also should be used to give notice to the debtor when the trustee or a creditor objects to the debtor’s claim of exemptions under Rule 4003(b) or requests that the court modify the debtors confirmed chapter 12 or chapter 13 plan under Rule 3015(g).

Bankruptcy Rule 9009 states that the Official Forms shall be used with alterations as may be appropriate. Any adaptation of Form 20A should carry out the intent to give notice of applicable procedures in easily understood language.

III. DIRECTIONS

1. Directions for the person preparing the notice are in italics and enclosed in brackets on the Official Form. Only the language which applies to the particular motion or objection under the Bankruptcy Rules, the court’s local rules, or court order should be included in the notice. (Copies of the court’s local rules may be obtained from the clerk’s office or, in many instances, from the court’s Internet website.) The notice may be modified to the particular requirements of the matter, but any adaptation should be consistent with the intent to give notice of applicable procedures in easily understood language. See Fed. R. Bankr. P. 9009.

2. The notice should be prepared and sent by the person who filed the motion or objection (the movant) unless the local rules or court order provide for some other entity to give notice.

3. The caption should be placed at the top of the page and should conform to Official Form 16A. Instructions for Official Form 16A, Caption (Full), may be found following that form.

4. The name of the movant and a description of the relief requested from the court should be inserted in the first paragraph in the spaces indicated.

5. The action which the court has been asked to take and the deadline for responding to the motion or objection should be specified in the third paragraph in the spaces indicated.

6. In the space following the third paragraph, the person preparing the notice should specify whether the person receiving the notice must file a written request for a hearing or a written response in order to oppose the motion or objection. The address of the bankruptcy clerk's office, and the names and addresses of the movant's attorney and others to be served should be set out in the spaces indicated.

7. If a hearing has been scheduled on the motion or objection, the time, date, and place for the hearing should be specified in the space provided.

8. Any additional steps required to oppose the motion or objection under the local rules or court order should be set out in the space provided.

9. The person who prepares and sends the notice should sign and date it and set out the preparer's name and address in the spaces indicated.

10. Copies of the notice should be filed with the court and mailed to the person against whom relief is sought, that person's attorney (if any), and other parties as required by local rules or court order.

Form 20B

NOTICE OF OBJECTION TO CLAIM

Official Form 20B
(9/97)

United States Bankruptcy Court

_____ District Of _____

In re _____)
Set forth here all names including married,)
maiden, and trade names used by debtor within)
last 6 years.)
 Debtor) Case No. _____
 Address _____)
 _____) Chapter _____
 Social Security No(s): _____)
 Employer's Tax Identification No(s). *[if any]*: _____)
 _____)

NOTICE OF OBJECTION TO CLAIM

_____ has filed an objection to your claim in this bankruptcy case.

Your claim may be reduced, modified, or eliminated. You should read these papers carefully and discuss them with your attorney, if you have one.

If you do not want the court to eliminate or change your claim, then on or before (date) , you or your lawyer must:

{If required by local rule or court order.}

[File with the court a written response to the objection, explaining your position, at:

{address of the bankruptcy clerk's office}

If you mail your response to the court for filing, you must mail it early enough so that the court will receive it on or before the date stated above.

You must also mail a copy to:

{objector's attorney's name and address}

{names and addresses of others to be served}

Attend the hearing on the objection, scheduled to be held on (date) , (year) , at _____ a.m./p.m. in Courtroom _____, United States Bankruptcy Court, {address}.

If you or your attorney do not take these steps, the court may decide that you do not oppose the objection to your claim.

Date: _____

Signature: _____

Name:

Address:

NOTICE OF OBJECTION TO CLAIM**I. INTRODUCTION**

Official Form 20B, Notice of Objection to Claim, is intended to provide creditors and other claimants with a uniform, plain English explanation of what they must do to respond to objections to their claims. (The requirements for completing Official Form 10, Proof of Claim, may be found following that form. Form 20B is intended to make the court's resolution of objections to claims more fair, equitable, and efficient, by aiding creditors, who sometimes do not have counsel, in understanding the applicable rules. The form is intended to make it clear to creditors that the court may eliminate or change their claims unless they take the specified steps to oppose the objections.

The form is not intended to dictate the specific procedures to be used by different bankruptcy courts. The form contains optional language that can be used or adapted, depending on local procedures.

II. APPLICABLE LAW AND RULES

Rule 3007 of the Federal Rules of Bankruptcy Procedure (referred to as "Bankruptcy Rule" or "Fed. R. Bankr. P.") requires that an objection to the allowance of a claim be in writing and filed with the court. A copy of the objection and a notice of the hearing on it must be mailed or otherwise delivered to the creditor, the debtor, and the trustee at least 30 days prior to the hearing. Form 20B is to be used to give notice of the objection and hearing.

Bankruptcy Rule 9009 states that the Official Forms shall be used with alterations as may be appropriate. Any adaptation of the form should carry out the intent to give notice of applicable procedures in easily understood language.

III. DIRECTIONS

1. Directions for the person preparing the notice and alternative language are enclosed in brackets on the Official Form. The preparer should use the language which applies to the court's local rules or court order. (Copies of the court's local rules may be obtained from the clerk's office or, in many instances, from the court's Internet website.) Any adaptation of the Official Form should be consistent with the intent to give notice of applicable procedures in easily understood language. See Fed. R. Bankr. P. 9009.

2. The notice should be prepared and sent by the person who filed the objection to claim (the objector) unless the local rules or court order provide for some other entity to give notice.

3. The caption should be placed at the top of the page and should conform to Official Form 16A. Instructions for Official Form 16A, Caption (Full), may be found following that form.

4. The name of the objector should be inserted in the first paragraph in the blank provided.

5. The deadline for responding to the objection to claim should be specified in the third paragraph in the space indicated.

6. In the space following the deadline, the person preparing the notice should specify the steps which a creditor must take pursuant to local rules or court order to oppose the objection to claim.

7. The address of the bankruptcy clerk's office, and the names and addresses of the objector's attorney and others to be served should be set out in the spaces indicated.

8. The time, date, and place for the hearing on the objection to the claim should be specified in the space provided.
9. The person who prepares and sends the notice should sign and date it and set out the preparer's name and address it in the spaces indicated.
10. Copies of the notice should be filed with the court and mailed to the creditor, the debtor, the trustee, and any other parties required by the court at least 30 days prior to the hearing.

Advisory Committee Note to 1997 Amendment

These forms are new. They are intended to provide uniform, plain English explanations to parties regarding what they must do to respond in certain contested matters which occur frequently in bankruptcy cases. Such explanations have been given better in some courts than in others. The forms are intended to make bankruptcy proceedings more fair, equitable, and efficient, by aiding parties, who sometimes do not have counsel, in understanding the applicable rules. It is hoped that use of these forms also will decrease the number of inquiries to bankruptcy clerks' offices.

These notices will be sent by the movant unless local rules provide for some other entity to give notice.

These forms are not intended to dictate the specific procedures to be used by different bankruptcy courts. The forms contain optional language that can be used or adapted, depending on local procedures. Similarly, the signature line will be adapted to identify the actual sender of the notice in each circumstance. All adaptations of the form should carry out the intent to give notice of applicable procedures in easily understood language.

OFFICIAL FORMS

CONVERSION TABLE FOR OFFICIAL BANKRUPTCY FORMS

Former Official Form Number

Form No. 1.	Voluntary Petition [Revised; see new Official Form 1.]
Form No. 2.	Application and Order to Pay Filing Fee in Installments [Renumbered; see new Official Form 3.]
Form No. 3.	Order for Payment of Filing Fee in Installments [Abrogated and combined with Form No. 2; see new Official Form 3.]
Form No. 4.	Unsworn Declaration under Penalty of Perjury on Behalf of a Corporation or Partnership [Renumbered; see new Official Form 2.]
Form No. 5.	Certificate of Commencement of Case [Abrogated.]
Form No. 6.	Schedules of Assets and Liabilities [Revised; see new Official Form 6.]
Form No. 6A.	Schedule of Current Income and Current Expenditures for Individual Debtor [Revised; see new Official Form 6, Schedules I and J.]
Form No. 7.	Statement of Financial Affairs for Debtor Not Engaged in Business [Revised and combined with former Form No. 8; see new Official Form 7.]
Form No. 8.	Statement of Financial Affairs for Debtor Engaged in Business [Revised and combined with former Form No. 7; see new Official Form 7.]
Form No. 8A.	Chapter 7 Individual Debtor's Statement of Intention [Renumbered; see new Official Form 8.]
Form No. 9.	List of Creditors Holding 20 Largest Unsecured Claims [Renumbered; see new Official Form 4.]
Form No. 10.	Chapter 13 Statement [Abrogated; see new Official Forms 6, 7, and 8.]
Form No. 11.	Involuntary Case: Creditors' Petition [Revised, combined with former Form No. 12, and renumbered; see new Official Form 5.]
Form No. 12.	Involuntary Case Against Partnership; Partner's Petition [Abrogated and combined with former Form No. 11; see new Official Form 5.]
Form No. 13.	Summons to Debtor [Abrogated.]
Form No. 14.	Order for Relief [Abrogated.]
Form No. 15.	Appointment of Committee of Unsecured Creditors in Chapter 9 Municipality or Chapter 11 Reorganization Case [Abrogated.]
Form No. 16.	Order for Meeting of Creditors and Related Orders, Combined with Notice Thereof and of Automatic Stay [Revised and renumbered; see new Official Form 9.]

OFFICIAL FORMS

Former Official Form Number

- | | |
|--------------|--|
| Form No. 17. | General Power of Attorney
[Renumbered; see new Official Form 11A.] |
| Form No. 18. | Special Power of Attorney
[Renumbered; see new Official Form No. 11B.] |
| Form No. 19. | Proof of Claim
[Revised and renumbered; see new Official Form 10.] |
| Form No. 20. | Proof of Claim for Wages, Salary, or Commissions
[Abrogated and combined with former Form No. 19; see new Official Form 10.] |
| Form No. 21. | Proof of Multiple Claims for Wages, Salary, or Commissions
[Abrogated and combined with former Form No. 19; see new Official Form No. 10.] |
| Form No. 22. | Order Appointing Interim Trustee and Fixing Amount of Bond
[Abrogated.] |
| Form No. 23. | Order Approving Election of Trustee and Fixing Amount of Bond
[Abrogated.] |
| Form No. 24. | Notice to Trustee of Selection and of Time Fixed for Filing a Complaint Objecting to Discharge of Debtor
[Abrogated.] |
| Form No. 25. | Bond and Order Approving Bond of Trustee
[Abrogated.] |
| Form No. 26. | Certificate of Retention of Debtor in Possession
[Abrogated.] |
| Form No. 27. | Discharge of Debtor
[Renumbered; see new Official Form 18.] |
| Form No. 28. | Order and Notice for Hearing on Disclosure Statement
[Renumbered; see new Official Form 12.] |
| Form No. 29. | Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof
[Renumbered; see new Official Form 13.] |
| Form No. 30. | Ballot for Accepting or Rejecting Plan
[Renumbered; see new Official Form 14.] |
| Form No. 31. | Order Confirming Plan
[Renumbered; see new Official Form 15.] |
| Form No. 32. | Notice of Filing Final Account
[Abrogated.] |
| Form No. 33. | Final Decree
[Abrogated.] |
| Form No. 34. | Caption of Adversary Proceedings
[Renumbered; see new Official Form No. 16C.] |
| Form No. 35. | Notice of Appeal to a District Court or Bankruptcy Appellate Panel from a Judgment of a Bankruptcy Court Entered in an Adversary Proceeding
[Revised and renumbered; see new Official Form 17.] |

OFFICIAL FORMS

Note Concerning Continued Availability of Certain Abrogated Forms.

Forms No. 5, 13, 14, 26, 32 and 33, although abrogated as Official Forms, continue to be available as procedural forms issued by the Director of the Administrative Office of the United States Courts. Members of the bar and the public may consult the Bankruptcy Forms Manual, which is available in the clerk's office at every bankruptcy court location. The contents of the Bankruptcy Forms Manual may be copied without restriction, subject to any applicable copy fee charged by the clerk.

Forms No. 15, 22, 23, 24 and 25, also abrogated as Official Forms, pertain to functions now performed by the United States trustee. Any forms deemed necessary for carrying out those functions will be issued by the Department of Justice.

NATIONAL BANKRUPTCY REVIEW COMMISSION RECOMMENDATIONS TO CONGRESS

Editorial Comments

The National Bankruptcy Review Commission is an independent commission established under the Bankruptcy Reform Act of 1994 to investigate and study issues relating to the Bankruptcy Code; solicit divergent views of parties concerned with the operation of the bankruptcy system; evaluate the advisability of proposals with respect to such issues; and prepare a report outlining its recommendations.

The Commission and the eight Working Groups formed by the Commission held 21 national and regional meetings throughout 1996 and 1997 to gather information, solicit views and draft proposals for amending the Bankruptcy Code. The Commission had more than 2,600 people participate in the meetings, and received more than 2,300 submissions.

On October 20, 1997, the Commission issued its "Recommendations to Congress," reproduced below, in which it outlined over 170 individual recommendations for improving bankruptcy law and procedure. The nine Commissioners achieved unanimity on a broad series of recommendations—changing the bankruptcy appellate structure, the need for better compilation and dissemination of bankruptcy data, and improving bankruptcy procedure and jurisdiction. In other areas, such as small business cases, uniformity in exemptions, random audits, a national filing registry, consumer credit counseling and a bright line test to bar discharge of credit card debt, there was strong consensus. Where there has not been consensus, however, in a series of consumer bankruptcy proposals, the complete report (which may be accessed at the Commission's website—www.nbrc.gov—or thorough the U.S. Government Printing Office website at www.access.gpo.gov) sets forth comprehensive majority and minority views that fully address the issues.

This is a summary of the Commission's recommendations:

- For consumer bankruptcy, a uniform approach to exemptions for debtors that, coupled with audits, national registration, and a limit on both repeat filings and reaffirmation of unsecured debt, should help slow or reverse the increase in consumer bankruptcies and enable the debtors to repay more of their obligations to more of their creditors.
- For business bankruptcy, increased efficiency and cost savings through a new approach to how chapter 11 cases are processed, new proposals for treatment of partnerships in bankruptcy, contracts and preference payments, a recognition of the special challenges of transnational insolvency,

RECOMMENDATIONS TO CONGRESS

and mass damage claims and, for small business reorganizations, accelerated procedures to help eliminate unproductive cases.

- For family farm bankruptcy, the permanent establishment of chapter 12 and, for municipal bankruptcy, improved procedures suggested by the experience of the Orange County chapter 9 case.
- For the entire system, a major savings of time and money through the elimination of a mandatory appeal to the federal district courts or the bankruptcy appellate panels, improved compatibility between the bankruptcy law and the Internal Revenue Code, and renewed attention to the roles and responsibilities of bankruptcy judges, private trustees and the U.S. Trustee program.

The members comprising the Commission were appointed by the President, Congress and Chief Justice. It was originally chaired by former Representative Mike Synar (D-OK) who resigned on December 19, 1995 and died on January 9, 1996. On March 29, 1996, Brady C. Williamson, Esq. of Madison, WI was appointed by the President to be the Chair. The other members of the Commission were Vice Chair Hon. Robert E. Ginsberg, U.S. Bankruptcy Judge, IL; Jay Alix, CPA, MI; M. Caldwell Butler, Esq., a former Member of Congress, VA; Babette A. Ceccotti, Esq., NY; John A. Gose, Esq., WA; Jeffrey Hartley, Esq., AL; Hon. Edith Hollan Jones, U.S. Circuit Judge, Fifth Circuit, TX and James I. Shepard, Esq., CA.

The Commission Report will not have an immediate effect on the Bankruptcy Code or related laws, but is intended to serve as the basis for future reform of the bankruptcy system.

RECOMMENDATIONS TO CONGRESS

Chapter 1: Consumer Bankruptcy—System Administration

1.1.1 *National Filing System*

A national filing system should be established and maintained that would identify bankruptcy filings using social security numbers or other unique identifying numbers.

1.1.2 *Heightened Requirements for Accurate Information*

The Bankruptcy Code should direct trustees to perform random audits of debtors' schedules to verify the accuracy of the information listed. Cases would be selected for audit according to guidelines developed by the Executive Office for United States Trustees.

1.1.3 *False Claims*

Courts should be authorized to order creditors who file and fail to correct materially false claims in bankruptcy to pay costs and the debtors' attorneys' fees involved in correcting the claim. If a creditor knowingly filed a false claim, the court could impose appropriate additional sanctions.

1.1.4 Rule 9011

The Commission endorses the amended Rule 9011 of the Federal Rules of Bankruptcy Procedure, to become effective on December 1, 1997, which will make an attorney's presentation to the court of any petition, pleading, written motion, or other paper a certification that the attorney made a reasonable inquiry into the accuracy of that information, and thus will help ensure that attorneys take responsibility for the information that they and their clients provide.

1.1.5 Financial Education

All debtors in both Chapter 7 and in Chapter 13 should have the opportunity to participate in a financial education program.

Chapter 1: Consumer Bankruptcy—Property Exemptions

1.2.1 Elimination of Opt Out

A consumer debtor who has filed a petition for relief under the Bankruptcy Code should be allowed to exempt property as provided in section 522 of the Code. Subsection (b)(1) and (2) of section 522 should be repealed.

1.2.2 Homestead Property

The debtor should be able to exempt the debtor's aggregate interest as a fee owner, a joint tenant, or a tenant by the entirety, in real property or personal property that the debtor or a dependent of the debtor uses as a residence in the amount determined by the laws of the state in which the debtor resides, but not less than \$20,000 and not more than \$100,000. Subsection (m) of section 522 should be revised to reflect that all exemptions except for the homestead exemption shall apply separately to each debtor in a joint case.

1.2.3 Nonhomestead Lump Sum Exemption

With respect to property of the estate not otherwise exempt by other provisions, a debtor should be permitted to retain up to \$20,000 in value in any form. A debtor who claims no homestead exemption should be permitted to exempt an additional \$15,000 of property in any form.

- 1.2.4** All professionally-prescribed medical devices and health aids necessary for the health and maintenance of the debtor or a dependent of the debtor should be exempt.

1.2.5 Rights to Receive Benefits and Payments

All funds held directly or indirectly in a trust that is exempt from federal income tax pursuant to sections 408 or 501(a) of the Internal Revenue Code should be exempt.

1.2.6 Rights to Payments

Rights to receive future payments (*e.g.*, social security benefits, life insurance) should be exempt, and the debtor's right to receive an award under a crime victim's reparations law or payment for a personal bodily injury claim of the debtor or the debtor's dependent should be exempt.

RECOMMENDATIONS TO CONGRESS

Chapter 1: Consumer Bankruptcy—Reaffirmation Agreements and the Treatment of Secured Debt

1.3.1 11 U.S.C. § 524(c) should be amended to provide that a reaffirmation agreement is permitted, with court approval, only if the amount of the debt that the debtor seeks to reaffirm does not exceed the allowed secured claim, the lien is not avoidable under the provisions of title 11, no attorney fees, costs, or expenses have been added to the principal amount of the debt to be reaffirmed, the motion for approval of the agreement is accompanied by underlying contractual documents and all related security agreements or liens, together with evidence of their perfection, the debtor has provided all information requested in the motion for approval of the agreement, and the agreement conforms with all other requirements of subsection (c).

Section 524(d) should be amended to delineate the circumstances under which a hearing is not required as a prerequisite to a court approving an agreement of the kind specified in section 524(c): a hearing will not be required when the debtor was represented by counsel in negotiations on the agreement and the debtor's attorney has signed the affidavit as provided in section 524 (c), and a party in interest has not requested a judicial valuation of the collateral that is the subject of the agreement. If one or more of the foregoing requirements is not met, or in the court's discretion, the court shall conduct a hearing to determine whether an agreement that meets all of the requirements of subsection (c) should be approved. Court approval of an agreement signifies that the court has determined that the agreement is in the best interest of the debtor and the debtor's dependents and does not impose undue hardship on the debtor and the debtor's dependents in light of the debtor's income and expenses.

The Commission recommends that the Advisory Committee on Bankruptcy Rules of the Judicial Conference prescribe a form motion for approval of reaffirmation agreements that contains information enabling the court and the parties to determine the propriety of the agreement. Approval of the motion would not entail a separate order of the court.

1.3.2 An additional subsection should be added to section 524 to provide that the court shall grant judgment in favor of an individual who has received a discharge under section 727, 1141, 1228, or 1328 of this title for costs and attorneys fees, plus treble damages, from a creditor who threatens, files suit, or otherwise seeks to collect any debt that was discharged in bankruptcy and was not the subject of an agreement in accordance with subsections (c) and (d) of section 524.

1.3.3 *No Ride-Through*

Section 521(2) should be amended to clarify that a debtor with consumer debts that are secured, as determined by the provisions of title 11, by property of the estate must redeem the property or obtain court approval of an agreement under section 524(c) of title 11 in order to retain the property postdischarge, except for a security interest in real or personal property that is the debtor's principal residence.

1.3.4 *Security Interests in Household Goods*

Household Goods Worth Less Than \$500

Section 522(f) should provide that a creditor claiming a purchase money security interest in exempt property held for personal or household use of the debtor or a dependent of the debtor in household furnishings, wearing apparel, appliances, books, animals, crops, musical instruments, jewelry, implements, professional books, tools of the trade or professionally prescribed health aids for the debtor or a member of the debtor's household must petition the bankruptcy court for continued recognition of the security interest. The court shall hold a hearing to value each item covered by the creditor's petition. If the value of the item is less than \$500, the petition shall not be granted; if the value is \$500 or greater, the security interest would be recognized and treated as a secured loan in Chapter 7 or Chapter 13.

1.3.5 *Characterization of Rent-to-Own Transactions*

Consumer rent-to-own transactions should be characterized in bankruptcy as installment sales contracts.

Chapter 1: Consumer Bankruptcy—Discharge, Exceptions to Discharge and Objections to Discharge

1.4.1 *Credit Card Debt*

Except for credit card debts that are excepted from discharge under section 523(a)(2)(B) (for materially false written statements respecting the debtor's financial condition) and section 523(a)(14), (debts incurred to pay nondischargeable taxes to the United States), debts incurred on a credit card issued to the debtor that did not exceed the debtor's credit limit should be dischargeable unless they were incurred within 30 days before the order for relief under title 11.

1.4.2 *Debts Incurred to Pay Nondischargeable Federal Tax Obligations*

Section 523(a)(14) should remain unchanged to except from discharge debts incurred for federal taxes that would be nondischargeable under section 523(a)(1).

1.4.3 *Criminal Restitution Orders*

Section 523(a)(13) should be expanded to apply to all criminal restitution orders.

1.4.4 *Family Support Obligations*

Sections 523(a)(5), (a)(15), and (a)(18) should be combined. The revised 523(a)(5) should provide that all debts actually in the nature of support, whether they have been denominated in a prior court order as alimony, maintenance, support, property settlements, or otherwise, are nondischargeable. In addition, debts owed under state law to a state or municipality in the nature of support would be nondischargeable in all chapters.

1.4.5 *Dischargeability of Student Loans*

Section 523(a)(8) should be repealed.

RECOMMENDATIONS TO CONGRESS

1.4.6 *Issue Preclusive Effect of True Defaults*

For complaints to establish nondischargeability on grounds set forth in section 523(c), the Bankruptcy Code should clarify that issues that were not actually litigated and necessary to a prior judgment shall not be given preclusive effect.

1.4.7 *Vicarious Liability*

Section 523(c) should be amended such that intentional action by a wrongdoer who is not the debtor cannot be imputed to the debtor.

1.4.8 *Effect of Lack of Notice on Time to Bring Objection to Discharge*

Creditors that did not receive notice of a bankruptcy should get an extension of time to file an objection to or seek revocation of a discharge.

1.4.9 *Settlement and Dismissal of Objections to Discharge*

Section 727 should be amended to provide that (a) any complaint objecting to discharge may be dismissed on motion of the plaintiff only after giving notice to the United States trustee, the case trustee and all creditors entitled to notice, advising them of an opportunity to substitute as plaintiff in the action; (b) any motion to dismiss a complaint objecting to discharge must be accompanied by an affidavit of the moving party disclosing all consideration given or promised to be given by the debtor in connection with dismissal of the complaint; and (c) if the debtor has given or promised to give consideration in connection with dismissal of the complaint, the complaint may not be dismissed unless the consideration benefits the estate generally.

Chapter 1: Consumer Bankruptcy—Chapter 13 Repayment Plans

1.5.1 *Home Mortgages*

A Chapter 13 plan could not modify obligations on first mortgages and refinanced first mortgages, except to the extent currently permitted by the Bankruptcy Code. Section 1322(b)(2) should be amended to provide that the rights of a holder of a claim secured only by a junior security interest in real property that is the debtor's principal residence may not be modified to reduce the secured claim to less than the appraised value of the property at the time the security interest was made.

1.5.2 *Valuation of Collateral*

A creditor's secured claim in personal property should be determined by the property's wholesale price. A creditor's secured claim in real property should be determined by the property's fair market value, minus hypothetical costs of sale.

1.5.3 Payments on secured debts that are subject to modification should be spread over the life of the plan, according to fixed criteria for interest rates.

1.5.4 *Unsecured Debt*

Payments on unsecured debt should be determined by guidelines based on a graduated percentage of the debtor's income, subject to upward adjustment to

meet the section 1325(a)(4) requirement that creditors receive at least the present value of whatever they would have received in a Chapter 7. The trustee or an unsecured creditor should be authorized to file an objection to any plan that deviates from the guidelines, and a court would determine whether the deviation was appropriate in light of all the circumstances.

1.5.5 Consequences of Incomplete Payment Plans

The Bankruptcy Code should provide that a case under Chapter 13 that otherwise meets the standards for dismissal shall be converted to Chapter 7 after notice and a hearing unless a party in interest objects on the basis that the debtor had been granted a discharge in a Chapter 7 case commenced within six years of the date on which the conversion would take place, in which case the Chapter 13 case will be dismissed. In addition, the debtor may object to conversion without grounds, in which case the Chapter 13 case will be dismissed. The standards for modification, dismissal, and discharge in Chapter 13 would not otherwise change.

Section 362 should be amended to provide that the filing of a petition by an individual does not operate as a stay if the individual has filed two or more petitions for relief under title 11 within six years of filing the instant petition for relief and if the individual has been a debtor in a bankruptcy case within 180 days prior to the instant petition for relief. On the request of the debtor, after notice and a hearing, the court may impose a stay for cause shown, subject to such conditions and modifications as the court may impose.

1.5.6 In Rem Orders

Section 362 should be amended to provide that the filing of a petition by an individual does not operate as a stay with respect to property of the estate transferred by that individual to another individual who was a debtor under title 11 within 180 days of the filing of the instant petition, unless the court grants a stay with respect to such property after notice and a hearing on request of the debtor.

After notice and a hearing, a bankruptcy court should be empowered to issue *in rem* orders barring the application of a future automatic stay to identified property of the estate for a period of up to six years when a party could show that the debtor had transferred such real property or leasehold interests or fractional shares of property or leasehold interests to avoid creditor foreclosure or eviction. A subsequent owner of the property or tenant of the leasehold who files for bankruptcy (or the same owner or holder in a subsequent filing) should be permitted to petition the bankruptcy court for the imposition of a stay to protect property of the estate, which the court would be required to grant to protect innocent parties who were not a part of a scheme to transfer the property to hinder foreclosure or eviction.

1.5.7 Retention of the “Superdischarge”

Congress should retain 11 U.S.C. § 1328(a), which permits a debtor who completes all payments under the plan to discharge all debts provided for by the plan or disallowed under section 502 of title 11 except for those listed in section 1328(a)(1)–(3).

RECOMMENDATIONS TO CONGRESS

- 1.5.8** Debtors who choose Chapter 13 repayment plans should have their bankruptcy filings reported differently from those who do not. Debtors who complete voluntary debtor education programs should have that fact noted on their credit reports.
- 1.5.9** Trustees should be encouraged to establish credit rehabilitation programs to help provide better, cheaper access to credit for those who participate in repayment plans.

Chapter 2: Treatment of Mass Future Claims in Bankruptcy

2.1.1 Definition of Mass Future Claim

A definition of “mass future claim” should be added as a subset of the definition of “claim” in 11 U.S.C. § 101(5). “Mass future claim” should be defined as a claim arising out of a right to payment, or equitable relief that gives rise to a right to payment that has or has not accrued under nonbankruptcy law that is created by one or more acts or omissions of the debtor if:

- 1) the act(s) or omission(s) occurred before or at the time of the order for relief;
- 2) the act(s) or omission(s) may be sufficient to establish liability when injuries ultimately are manifested;
- 3) at the time of the petition, the debtor has been subject to numerous demands for payment for injuries or damages arising from such acts or omissions and is likely to be subject to substantial future demands for payment on similar grounds;
- 4) the holders of such rights to payments are known or, if unknown, can be identified or described with reasonable certainty; and
- 5) the amount of such liability is reasonably capable of estimation.

The definition of “claim” in section 101(5) should be amended to add a definition of “holder of a mass future claim,” which would be an entity that holds a mass future claim.

2.1.2 Protecting the Interests of Holders of Mass Future Claims

The Bankruptcy Code should provide that a party in interest may petition the court for the appointment of a mass future claims representative. When a plan includes a class or classes of mass future claims, the Bankruptcy Code should authorize a court to order the appointment of a representative for each class of holders of mass future claims. A mass future claims representative shall serve until further order of the bankruptcy court.

The Bankruptcy Code should provide that a mass future claims representative shall have the exclusive power to file a claim or claims on behalf of the class of mass future claims (and to determine whether or not to file a claim), to cast votes on behalf of the holders of mass future claims and to exercise all of the powers of a committee appointed pursuant to section 1102. However, a holder of a mass future claim may elect to represent his, her, or its own interests and may opt out of being represented by the mass future claims representative.

The Bankruptcy Code should provide that prior to confirmation of a plan of reorganization, the fees and expenses of a mass future claims representative

and his or her agents shall be administrative expenses under section 503. Following the confirmation of a plan of reorganization, and for so long as holders of mass future claims may exist, any continuing fees and expenses of a mass future claims representative and his or her agents shall be an expense of the fund established for the compensation of mass future claims.

The Bankruptcy Code should provide that a mass future claims representative shall serve until further orders of the bankruptcy court declare otherwise, shall serve as a fiduciary for the holders of future claims in such representative's class, and shall be subject to suit only in the district where the representative was appointed.

2.1.3 *Determination of Mass Future Claims*

Section 502 should provide that the court may estimate mass future claims and also may determine the amount of mass future claims prior to confirmation of a plan for purposes of distribution as well as allowance and voting. In addition, 28 U.S.C. § 157(b)(2)(B) should specify that core proceedings include the estimation or determination of the amount of mass future claims.

2.1.4 *Channeling Injunctions*

Section 524 should authorize courts to issue channeling injunctions.

2.1.5 *Plan Confirmation and Discharge; Successor Liability*

Sections 363 and 1123 should provide that the trustee may dispose of property free and clear of mass future claims when the trustee or plan proponent has satisfied the requirements for treating mass future claims. Upon approving the sale, the court could issue, and later enforce, an injunction to preclude holders from suing a successor/good faith purchaser.

Chapter 2: Transnational Insolvency

2.2.1 Adoption of the UNCITRAL Model Law for Cross-Border Insolvencies

2.2.2 Retention of provisions for additional relief

2.2.3 Amendment of title 28 to add jurisdiction over the Model Law provisions

2.2.4 Conforming amendments to the definitions of foreign proceeding and foreign representative in section 101(23)-(24)

2.2.5 Exclusion from the application of the Model Law of consumers resident in the United States if their debts are within the limits for Chapter 13

2.2.6 Recognition *vel non* of foreign tax claims to be left to evolving caselaw and treaty negotiations

2.2.7 28 U.S.C. § 1410 should be amended to provide that the various bases for venue may be used in the alternative as a matter of choice, *i.e.*, the word “only” should be deleted from the section; additionally there should be a catch-all venue choice related to the interest of justice and convenience of the parties

Chapter 2: Partnerships

2.3.1 Defining the term “General Partner”

A “general partner” should be defined under 11 U.S.C. § 101 as any entity that as a result of an existing or former status as an actual or purported general partner in an existing, former, predecessor, or affiliated partnership, is liable under applicable nonbankruptcy law for one or more debts of the partnership.

2.3.2 Consent of Former Partners

The Bankruptcy Code and Rules should be amended to clarify that, notwithstanding Recommendation 1 (defining “general partner”), a former general partner of a partnership is not, absent a specific court order to the contrary, required to consent to a voluntary petition by a partnership, to be served with a petition or summons in an involuntary case against a partnership, or to perform the duties of disclosure or procedural duties imposed on a general partner of a debtor partnership.

2.3.3 Bankruptcy Court Jurisdiction

The court in which a partnership case is pending should have jurisdiction under 28 U.S.C. § 1334(b) to determine who is or may be liable as a general partner for the debts of the partnership and may determine the rights among the general partners with respect to the debts of the partnership. Such matters should constitute core proceedings under 28 U.S.C. § 157(b).

2.3.4 Liability of General Partner for Deficiency in Partnership Case

If there is a deficiency of property of the partnership estate to pay in full all allowed claims in a case under title 11, the estate should have a claim against each general partner to the extent that, under applicable nonbankruptcy law, such general partner is personally liable for such deficiency. The amount of the deficiency claim should not be reduced on account of any right of contribution or indemnity among general partners. The claim should be estimated if its determination would unduly delay the administration of the case. Any action or proceeding to enforce liability under this section should be commenced no later than four years after the entry of the order for relief in the case concerning the partnership.

2.3.5 Power of the Court to Assure Payment of the Deficiency

Renumbered section 723(b) of the Bankruptcy Code should be amended to provide that the court in a partnership case may, after notice and a hearing, order any general partner that is not a debtor in a case under this title (1) to provide the estate, in such amount as the court shall determine to be appropriate under the circumstances, with indemnity for, or assurance of payment of, any deficiency recoverable from such general partner, or (2) not to incur obligations or transfer property except under specified circumstances.

2.3.6 Trustee’s Recovery against the Estate of a Debtor General Partner

Renumbered section 723(c) of the Bankruptcy Code should be amended to provide that notwithstanding section 728(c), the trustee of a partnership has

a claim against the estate of each general partner in such partnership that is a debtor in a case under title 11 for (1) the full amount of all claims allowed in the case concerning the partnership for which such general partner would otherwise be personally liable as a general partner under applicable nonbankruptcy law; and (2) administrative claims which have been assessed against such general partner. Notwithstanding section 502 of this title, there shall not be allowed in such partner's case a claim against the partner on which both the general partner and the partnership are liable, except to the extent that such claim is allowable and secured only by property of such general partner and not by property of such partnership.

2.3.7 Repeal of the “Jingle Rule” in All General Partner Bankruptcy Cases

Chapter 5 of the Bankruptcy Code should be amended in order to provide that the claim of a trustee of a partnership debtor, or the claim of a creditor of a nondebtor partnership, is entitled to share in the distribution in a general partner's bankruptcy case in the same manner and to the same extent as any other claim of the same class of a creditor of such general partner.

2.3.8 Allocation of Expenses of Administration of a Partnership Case

Chapter 5 of the Bankruptcy Code should be amended to provide that the expenses of administration of a partnership case under section 503 of the Bankruptcy Code may be assessed against general partners or paid from the property constituting recoveries from general partners under this section and from other property of the estate in such proportions as the court shall determine are fair and reasonable after notice and hearing.

2.3.9 Distribution of Recoveries from General Partners

Renumbered section 723 of the Bankruptcy Code should be amended to provide that notwithstanding section 726 of the Bankruptcy Code (except as provided in Recommendation 2.3.8 above), the trustee should apply any recovery obtained from a general partner or the estate of a general partner only to the payment of deficiencies on claims for which such general partner is personally liable as a general partner under applicable nonbankruptcy law. Any property constituting recoveries from general partners or the estates of general partners under this Recommendation not applied to the proper deficiencies as herein provided or to administration expenses (as provided in Recommendation 2.3.8 above), should be equitably distributed by the trustee to such general partner or to such general partners' estates as may be ordered by the court after notice and hearing.

2.3.10 Distribution of Property of the Partnership Estate

Renumbered section 723 of the Bankruptcy Code should be amended to provide that notwithstanding section 726 of the Code, and except as set forth in Recommendation 2.3.8 above (treatment of expenses of administration), the trustee should distribute property of the partnership estate which is not recovered from general partners or the estates of debtor general partners to allowed claims against the partnership in accordance with otherwise applicable provisions of this title without considering distributions of property from general partners or general partners' estates.

2.3.11 *Trustee's Power to File Involuntary Cases*

Section 303(b)(3) of the Bankruptcy Code should be amended to permit the trustee of a partnership in a case commenced under title 11 to file an involuntary petition against a general partner without regard to the number of creditors, nature of the claims or dollar amount of the claims otherwise required under section 303(b)(1) and (2).

2.3.12 *Appointment of Committee of General Partners*

Chapter 11 of the Bankruptcy Code should be amended to provide that, on request of a party in interest, the court may authorize the United States trustee to appoint a committee of general partners that is fairly representative of the interests of all general partners.

2.3.13 *General Partner Liability on Nonrecourse Partnership Debt under 11 U.S.C. § 1111(b)*

Section 1111(b) of the Bankruptcy Code should be amended to clarify that, except as otherwise provided in a confirmed plan of a partnership debtor or the order confirming the plan, a general partner is not liable on a nonrecourse claim against the partnership except to the extent that the general partner is personally liable on such claim under applicable nonbankruptcy law.

2.3.14 *'Temporary' Injunction of Proceedings or Acts against Nondebtor General Partners*

The Bankruptcy Code should be amended to permit the court for cause, upon motion of a party in interest and after notice and hearing, to temporarily enjoin actions of creditors or general partners of a debtor partnership against nondebtor general partners or their property on account of partnership obligations. No injunction should be granted under this Recommendation unless the nondebtor general partner (1) consents to the jurisdiction of the bankruptcy court; (2) makes or undertakes to make the disclosures required by Recommendation 2.3.18 below; and (3) the order granting the injunction precludes the protected general partner from incurring obligations or transfers of property except under specified circumstances.

2.3.15 *Relief from the Temporary Injunction*

The Bankruptcy Code should be amended to provide that the court, upon request of a party in interest and after notice and hearing, may, for cause, grant relief from the temporary injunction provided pursuant to Recommendation 2.3.14. The relief available would include the termination, annulment, modification or conditioning a continuation of the injunction.

2.3.16 *'Postconfirmation' Injunction of Proceedings or Acts against Nondebtor General Partners Who Contribute to Plans*

The Bankruptcy Code should be amended to permit the court, in connection with the confirmation of a plan of reorganization in a partnership case, to enjoin partnership creditors and general partners from actions or proceedings against a general partner or its property to collect on partnership-related claims where the general partner has contributed or made an enforceable commitment to contribute an amount to the payment of debts in accordance

with the plan or the order confirming the plan. The court, after notice and hearing, must determine that the plan complies with otherwise applicable requirements for confirmation in light of the personal assets of the nondebtor contributing partners and that the injunction will not discriminate unfairly or inequitably with respect to creditors of the partnership or the claims of the general partners for contribution or indemnity.

2.3.17 *Revocation of Injunction*

The Bankruptcy Code should be amended to provide that the injunction issued with respect to any nondebtor general partner under Recommendation 2.3.16 above should be terminated or revoked on the request of a party in interest if, after notice and hearing, the court determines (1) that the protected nondebtor general partner has failed to perform a material commitment under the plan; (2) that the order confirming the plan in which the injunction was issued is revoked under sections 1144 or 1230 of the Code; or (3) that the nondebtor general partner has procured the injunction by fraud. The Bankruptcy Code should be further amended to provide that a request for revocation for fraud under provision (3) should be made at any time within two years after the date of the entry of the confirmation order.

2.3.18 *Duty of Disclosure by Nondebtor General Partners*

The Bankruptcy Code should be amended to provide that, unless otherwise ordered by the court for cause, each nondebtor general partner shall, within 30 days after the entry of the order for relief in a partnership case or within such time as the court shall fix, produce information concerning such partner's financial condition and affairs similar to that provided by a debtor, together with such additional information and periodic reports as may be required by the court from time to time.

2.3.19 *Access to Disclosed Information*

The Bankruptcy Code should be amended to provide that the trustee, debtor in possession or other entity designated by the court in a partnership bankruptcy case should maintain and promptly provide to parties in interest in the case, on reasonable request, certain important information regarding the nondebtor general partners of the debtor partnership.

2.3.20 *Treatment of LLC Member or LLC Manager Under the Bankruptcy Code*

Debtor LLC members in member-managed LLCs should be treated like general partners under the Bankruptcy Code. Similarly, debtor managers of manager-managed LLC's should be treated like general partners under the Bankruptcy Code. This treatment should be limited to three aspects of the LLC member or LLC manager relationship: (1) continuity of LLC after LLC member's or manager's bankruptcy filing; (2) transferability of LLC ownership interest; and (3) management rights in the LLC.

2.3.21 *Exclusion of a Partnership or LLC Relationship from Treatment under 11 U.S.C. § 365*

The Bankruptcy Code should be amended to exclude partnership and LLC governing documents and relationships from treatment under 11 U.S.C.

RECOMMENDATIONS TO CONGRESS

§ 365. A new section concerning partnership and LLC governing documents and relationships should be added to the Bankruptcy Code.

2.3.22 *Ipso Facto Provisions in Partnership or LLC Governing Documents Rendered Unenforceable*

Ipso facto provisions relating to partnerships, LLCs, and the rights or interests of partners or LLC members or managers should not be enforceable under the Bankruptcy Code. *Ipso facto* provisions include any provision in a partnership agreement, LLC operating agreement, or applicable nonbankruptcy law that operates to terminate or modify the rights of a partner or LLC member based on insolvency, financial condition, commencement of a voluntary or involuntary case under title 11, or appointment of a trustee or custodian. Non-*ipso facto* provisions that limit a partner's or LLC member's rights, relationship, interest, or permit expulsion on the basis of something other than insolvency, financial condition, commencement of a voluntary or involuntary case under title 11, or the appointment of a receiver would remain enforceable.

2.3.23 *Property of the Estate, Transferability, and Valuation of a Partnership or LLC Interest*

"Property of the estate" for a partner or LLC member should include all rights attendant with the partnership or LLC interest, including management rights, voting rights, and economic rights (including goodwill, the right to share in profits and losses, and any other right to payment). Except as provided below, the Recommendation does not alter the effect of section 541(a)(6), to the extent it is applicable. In the case of an individual partner or LLC member who (1) continues employment (in whatever capacity) with the partnership or LLC after the order for relief, and (2) whose estate receives or is more likely than not going to receive the "buyout price" as defined below, all partnership or LLC interest amounts arising, accruing, or payable after the order for relief are deemed to be on account of personal services rendered by the partner or LLC member and do not become property of the estate. There should be a presumption, in a case of an individual debtor, that the estate is more likely than not going to receive the "buyout price," upon which presumption the parties should be entitled to rely and function until the court orders to the contrary, after notice and hearing, on motion of the trustee or any party in interest.

The court should have the power to authorize a sale under section 363 of the partnership or LLC interest and order the admission of the buyer to the partnership or LLC with all rights and duties the debtor had, except that if the governing documents preclude transfer under a non-*ipso facto* provision, the anti-transfer clauses will be given effect, but only if the partnership or LLC pays the "buyout price" to the estate. The court should retain the power to (1) fashion reasonable payment terms which balance the needs of the estate for receipt of cash as rapidly as possible with the needs of the entity for liquidity and working capital to conduct its operations in a prudent manner; and (2) ensure receipt of the buyout price by the estate.

The "buyout price" means the highest price (including a calculation or appraisal method), if any, provided in the governing documents in the case of a buyout of an interest not on account of the bankruptcy of, insolvency of,

financial condition of, commencement of a voluntary or involuntary case under title 11 for, or appointment of a trustee or custodian for, a partner or LLC member or manager. If no such price is provided, the court should determine a fair buyout value.

2.3.24 *Treatment of Partnership and LLC Management Rights*

During any period when an estate administered in a bankruptcy case includes a partnership or LLC interest, the management and voting rights of the partner or LLC member are to be exercised as follows:

A debtor in possession under Chapter 11 or a debtor under either Chapter 12 or Chapter 13 should exercise all management and voting rights, subject to the applicable non-*ipso facto* provisions of the partnership or LLC governing documents and applicable nonbankruptcy law, and the other applicable provisions of the Bankruptcy Code;

Where (a) there is more than one general partner or LLC managing entity and at least one of such partners or entities is not a debtor in a case under the Bankruptcy Code, and (b) a Chapter 7 or Chapter 11 trustee has been appointed, then the trustee should not exercise any management rights except to the extent necessary to constitute a quorum or to meet a minimum majority required by the governing documents or applicable nonbankruptcy law;

In all other cases where a Chapter 7 or Chapter 11 trustee has been appointed, the trustee shall exercise all management and voting rights.

Regardless of the foregoing, in all cases where (1) an individual debtor continues to function as a partner or member after the order for relief, and (2) the estate receives or is more likely than not going to receive, the “buyout price,” then the individual should have the sole power to exercise management and voting rights attributable to periods after the order for relief.

2.3.25 *11 U.S.C. § 523 and Imputed Conduct or Liability*

11 U.S.C. § 523 should be amended to provide that nothing in this section shall preclude the discharge of a general partner from a debt (otherwise nondischargeable in a copartner’s or agent’s bankruptcy case) arising solely as a result of imputing to the general partner the conduct or liability of a copartner or agent.

2.3.26 *Subordination of Claims Arising from the Purchase or Sale of a Partnership Interest*

11 U.S.C. § 510(b) should be amended to subordinate the claims “arising from the rescission of a purchase or sale” of their partnership interests or “for damages arising from the purchase or sale” of their partnership interests to all claims and interests that are senior or equal to the claim or interest represented by such security or other interest in the bankruptcy case of a general partner.

Chapter 2: General Issues in Chapter 11

2.4.1 *Clarifying the Meaning of “Rejection”*

The concept of “rejection” in section 365 should be replaced with “election to breach.”

Section 365 should provide that a trustee’s ability to elect to breach a contract of the debtor is not an avoiding power.

Section 502(g) should be amended to provide that a claim arising from the election to breach shall be allowed or disallowed the same as if such claim had arisen before the date of the filing of the petition.

2.4.2 *Clarifying the Option of “Assumption”*

“Assumption” should be replaced with “election to perform” in section 365.

2.4.3 *Interim Protection and Obligations of Nondebtor Parties*

A court should be authorized to grant an order governing temporary performance and/or providing protection of the interests of the nondebtor party until the court approves a decision to perform or breach a contract.

Section 503(b) should include as an administrative expense losses reasonably and unavoidably sustained by a nondebtor party to a contract, a standard based on nonbankruptcy contract principles, pending court approval of an election to perform or breach a contract if such nondebtor party was acting in accordance with a court order governing temporary performance.

2.4.4 *Contracts Subject to Section 365; Eliminating the “Executory” Requirement*

Title 11 should be amended to delete all references to “executory” in section 365 and related provisions, and “executoriness” should be eliminated as a prerequisite to the trustee’s election to assume or breach a contract.

2.4.5 *Prebankruptcy Waivers of Bankruptcy Code Provisions*

Section 558 of the Bankruptcy Code should provide that except as otherwise provided in title 11, a clause in a contract or lease or a provision in a court order or plan of reorganization executed or issued prior to the commencement of a bankruptcy case does not waive, terminate, restrict, condition, or otherwise modify any rights or defenses provided by title 11. Any issue actually litigated or any issue resolved by consensual agreement between the debtor and a governmental unit in its police or regulatory capacity, whether embodied in a judgment, administrative order or settlement agreement, would be given preclusive effect.

2.4.6 *Prepackaged Plans of Reorganization; Section 341 Meeting of Creditors*

Section 341 should provide that upon the motion of any party in interest in a Chapter 11 case that entails a prepackaged plan of reorganization, the court may waive the requirement that the U.S. trustee convene a meeting of creditors.

2.4.7 *Authorization for Local Mediation Programs*

Congress should authorize judicial districts to enact local rules establishing mediation programs in which the court may order non-binding, confidential

mediation upon its own motion or upon the motion of any party in interest. The court may order mediation in an adversary proceeding, contested matter, or otherwise in a bankruptcy case, except that the court may not order mediation of a dispute arising in connection with the retention or payment of professionals or in connection with a motion for contempt, sanctions, or other judicial disciplinary matters. The court should have explicit statutory authority to approve the payment of persons performing mediation functions pursuant to the local rules of that district's mediation program who satisfy the training requirements or standards set by the local rules of that district. The statute should provide further that the details of such mediation programs that are not provided herein may be determined by local rule.

2.4.8 Court Review of Appointments to Creditors' Committees

Subsection (a)(2) of 11 U.S.C. § 1102, "Creditors' and equity security holders' committees," should be amended to read as follows:

(2) On request of a party in interest and after notice and a hearing, the court may order a change in membership of a committee appointed under subsection (a) of this section if necessary to ensure adequate representation of creditors or of equity security holders. On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. The United States Trustee shall appoint any such committee.

2.4.9 Employee Participation in Bankruptcy Cases

Changes to the Official Forms, the U.S. Trustee program guidelines and the Federal Rules of Bankruptcy Procedure, are recommended to the Administrative Office of the U.S. Courts, the Executive Office of the U.S. Trustee, and the Rules Committee, as appropriate, in order to improve identification of employment-related obligations and facilitate the participation by employee representatives in bankruptcy cases. The Official Forms for the bankruptcy petition, list of largest creditors, and/or schedules of liabilities should solicit more specific information regarding employee obligations. The U.S. Trustee program guidelines for the formation of creditors' committees should be amended to provide better guidance regarding employee and benefit fund claims. The appointment of employee creditors' committees should be encouraged in appropriate circumstances as a mechanism to resolve claims and other matters affecting the employees in a Chapter 11 case.

2.4.10 Enhancing the Efficacy of Examiners and Limiting the Grounds for Appointment of Examiners in Chapter 11 Cases

Congress should amend section 327 to provide for the retention of professionals by examiners for cause under the same standards that govern the retention of other professionals.

The Advisory Committee on Bankruptcy Rules of the Judicial Conference should consider a recommendation that Federal Rule of Bankruptcy Procedure 2004(a) be amended to provide that "On motion of any party in interest or of an examiner appointed under section 1104 of title 11, the court may order the examination of any entity."

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Congress should eliminate section 1104(c)(2), which requires the court to order appointment of an examiner upon the request of a party in interest if the debtor's fixed, liquidated, unsecured debts, other than debts for goods, services, or taxes or owing to an insider, exceed \$5,000,000.

2.4.11 Valuation of Property

A creditor's secured claim in personal property should be determined by the property's wholesale price.

A creditor's secured claim in real property should be determined by the property's fair market value, minus hypothetical costs of sale.

2.4.12 Clarifying The Conditions for Sales Free & Clear Under 11 U.S.C. § 363(f)

Congress should make clear that bankruptcy courts can authorize sales of property of the estate free of creditors' interests regardless of the relationship between the face amount of any liens and the value of the property sold.

2.4.13 Release of Claims Against Nondebtor Parties

Congress should amend sections 1123 and 524(e) to clarify that it is within the discretion of the court to allow a plan proponent to solicit releases of nondebtor liabilities. Creditors that agree in a separate document to release nondebtor parties will be bound by such releases, whereas creditors that decline to release their claims against nondebtor parties will not be bound to release their claims.

2.4.14 Exclusion of Payroll Deductions from Property of the Estate

Congress should amend 11 U.S.C. § 541(b) to clarify that funds deducted from paid wages within 180 days prior to the date of the commencement of a case under title 11, held by a debtor/employer, and owed by employees to third parties, other than a federal, state or local taxing authority, do not fall within the definition of "property of the estate."

2.4.15 Absolute Priority and Exclusivity

11 U.S.C. § 1129(b)(2)(B)(ii) should be amended to provide that the court may find a plan to be fair and equitable that provides for members of a junior class of claims or interests to purchase new interests in the reorganized debtor.

11 U.S.C. § 1121 should be amended to provide that on the request of a party in interest, the court will terminate exclusivity if a debtor moves to confirm a non-consensual plan that provides for the participation of a holder of a junior claim or interest under 1129(b)(2)(B) but does not satisfy the condition set forth in section 1129(b)(2)(B)(i).

2.4.16 Classification of Claims

Section 1122 should be amended to provide that a plan proponent may classify legally similar claims separately if, upon objection, the proponent can demonstrate that the classification is supported by a "rational business justification."

2.4.17 Prepetition Solicitation for a Prepackaged Plan of Reorganization

The standards and requirements provided in the Bankruptcy Code for postpetition solicitation should be applicable to solicitation for a plan of reorganization within 120 days prior to filing a Chapter 11 petition by a company that is subject to and in compliance with the public periodic reporting requirements of the Securities Exchange Act of 1934. Notice of such prepetition solicitation should be served on the Securities and Exchange Commission. If a company solicits for a plan of reorganization but does not file for bankruptcy, the bankruptcy requirements and standards should be applicable if the company does not complete an exchange offer or any other transaction on the basis of such solicitation.

2.4.18 Postpetition Solicitation for a Prepackaged Plan of Reorganization

Section 1125(b) should be amended to provide that the acceptance or rejection of a plan may be solicited after the commencement of a case under title 11 but before the court approves a written disclosure statement from those classes that were solicited for the plan prior to the filing of the bankruptcy petition.

2.4.19 Elimination of Prohibition on Nonvoting Equity Securities

Congress should amend section 1123(a)(6) to eliminate the requirement that the charter of the reorganized corporate debtor prohibit the issuance of nonvoting equity securities. Section 1123(a)(6) should otherwise remain unchanged.

2.4.20 Postconfirmation Plan Modification

11 U.S.C. § 1127(b) should be amended to permit modification after confirmation of a plan until the later of 1) substantial consummation or 2) two years after the date on which the order of confirmation is entered. All other restrictions on postconfirmation plan modification in section 1127(b) should remain unaltered.

Chapter 2: Small Business Proposals

2.5.1 Defining the term “Small Business”

A “small business debtor” is any debtor in a case under Chapter 11 (including any group of affiliated debtors) which has aggregate noncontingent, liquidated secured and unsecured debts as of the petition date or order for relief of five million dollars (\$5,000,000) or less and any single asset real estate debtor as defined in 11 U.S.C. § 101(51B), regardless of the amount of such debtor’s liabilities.

2.5.2 Flexible Rules for Disclosure Statement and Plan

Give the bankruptcy courts authority, after notice and hearing, to waive the requirements for, or simplify the content of, disclosure statements in small business cases where the benefits to creditors of fulfillment of full compliance with Bankruptcy Code § 1125 are outweighed by cost and lack of meaningful benefit to creditors which would exist if the full requirements of § 1125 were imposed;

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The Advisory Committee on Bankruptcy Rules of the Judicial Conference (“Rules Committee”) shall be called upon to adopt, within a reasonable time after enactment, uniform safe-harbor standard forms of disclosure statements and plans of reorganization for small business debtors, after such experimentation on a local level as they deem appropriate. These forms would not preclude parties from using documents drafted by themselves or other forms, but would be propounded as one choice that plan proponents could make, which, if used and completed accurately in all material respects, would be presumptively deemed upon filing to comply with all applicable requirements of Bankruptcy Code §§ 1123 and 1125. The forms shall be designed to fulfill the most practical balance between (i) on the one hand, the reasonable needs of the courts, the U.S. Trustee, creditors and other parties in interest for reasonably complete information to arrive at an informed decision and (ii) on the other hand, appropriate affordability, lack of undue burden, economy and simplicity for debtors; and

Repeal those provisions of 11 U.S.C. § 105(d) which are inconsistent with the proposals made herein, *e.g.*, those setting deadlines for filing plans.

Amend the Bankruptcy Code to expressly provide for combining approval of the disclosure statement with the hearing on confirmation of the plan.

2.5.3 Reporting Requirements

To create uniform national reporting requirements to permit U.S. Trustees, as well as creditors and the courts, better to monitor the activities of Chapter 11 debtors, the Rules Committee shall be called upon to adopt, with a reasonable time after enactment, amended rules requiring small business debtors to comply with the obligations imposed thereunder. The new rules will require debtors to file periodic financial and other reports, such as monthly operating reports, designed to embody, upon the basis of accounting and other reporting conventions to be determined by the Rules Committee, the best practical balance between (i) on the one hand, the reasonable needs of the court, the U.S. Trustee, and creditors for reasonably complete information and (ii) on the other hand, appropriate affordability, lack of undue burden, economy and simplicity for debtors. Specifically, the Rules Committee, shall be called upon to prescribe uniform reporting as to:

- a. the debtor’s profitability, *i.e.*, approximately how much money the debtor has been earning or losing during current and relevant recent fiscal periods;
- b. what the reasonably approximate ranges of projected cash receipts and cash disbursements (including those required by law or contract and those that are discretionary but excluding prepetition debt not lawfully payable after the entry of order for relief) for the debtor appear likely to be over a reasonable period in the future;
- c. how approximate actual cash receipts and disbursements compare with results from prior reports;
- d. whether the debtor is or is not (i) in compliance in all material respects with postpetition requirements imposed by the Bankruptcy Code and the Bankruptcy Rules and (ii) filing tax returns and paying taxes and other administrative claims as required by applicable nonbankruptcy law

as will be required by the amended statute and rules and, if not, what the failures are, how and when the debtor intends to remedy such failures and what the estimated costs thereof are; and

e. such other matters applicable to small business debtors as may be called for in the best interests of debtors and creditors and the public interest in fair and efficient procedures under Chapter 11.

2.5.4 Duties of the Debtor in Possession

The debtor is required to:

a. append to the voluntary petition or, in an involuntary case, to file within three days after the order for relief, either (A)(i) its most recent balance sheet, statement of operations and cash-flow statement and (ii) its most recent federal income tax return or (B) a statement made under penalty of perjury that no such financial statements have been prepared or that no federal income tax return has been filed or (C) both;

b. attend meetings, at which the debtor is represented by its senior management personnel and counsel, scheduled by the court, the U.S. Trustee, or the Bankruptcy Administrator including, but not limited to initial debtor interviews, court-ordered scheduling conferences, and meetings of creditors convened under 11 U.S.C. § 341;

c. file all schedules and statements of financial affairs for small business debtors within the limits set by the Bankruptcy Rules, unless the court, upon notice to the U.S. Trustee and a hearing, grants an extension, which extension or extensions shall not, in any event, exceed thirty (30) days after the order for relief absent extraordinary and compelling circumstances;

d. comply with postpetition obligations, including but not limited to the duties to: file tax returns, maintain appropriate and reasonable current insurance as is customary and appropriate to the industry, and timely pay all administrative expense tax claims, except those being contested by appropriate proceedings being diligently prosecuted;

e. create within ten (10) business days of the entry of order for relief (or as soon thereafter as possible in case all banks contacted during the first ten (10) business days decline the business) separate deposit accounts with a bank or banks in which the debtor shall be required to timely deposit, until a plan is confirmed or the case is dismissed or converted or a trustee is appointed, after receipt, all taxes collected or withheld by it for governmental units. In compelling circumstances, the court may dispense with these requirements after notice and a hearing;

f. allow the U.S. Trustee or its designated representative to inspect the debtor's business premises, books and records at reasonable times on reasonable prior written notice to the debtor.

2.5.5 Deadlines for Plan Filing and Confirmation

In small business cases only, require that the disclosure statement, if any, and plan must be filed within 90 days after the entry of order for relief, unless extended as permitted below. During this 90-day period, only the debtor may file a plan unless on request of a party in interest made during this period

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and after notice and a hearing, the court, for cause, orders otherwise. In small business cases only, require the plan to be confirmed within 150 days after the entry of order for relief, unless extended as permitted below.

2.5.6 *Burden of Proof for Extensions of Deadlines*

Permit extensions of the deadlines for filing and approving disclosure statements, if any, and filing and confirming plans of reorganization only if the debtor, having duly noticed and appeared at the necessary extension hearing conducted and ruled upon prior to the expiration of the deadline, if any, and having carried the burdens of coming forward and persuasion, demonstrates by a preponderance of the evidence that it is more likely than not to confirm a plan of reorganization within a reasonable time. No such deadline may be extended unless a new deadline is imposed at the time the extension is granted. The Bankruptcy and Judicial Codes will require the U.S. Trustee, as the case may be, to be a recipient of notice of extension hearings and to participate actively therein, in order to assure, to the maximum extent feasible, that the interests of the public are protected when determinations are made as to whether small business debtors receive extensions and have proven by a preponderance of the evidence that it is more likely than not that they will confirm a plan within a reasonable time.

2.5.7 *Scheduling Conferences*

Require the bankruptcy court to promptly conduct at least one on-the-record scheduling hearing, on notice to the U.S. Trustee and the debtor's 20 largest unsecured creditors to be sure that the deadlines discussed above are met except that no such hearing is required if an agreed order is filed by the debtor and U.S. Trustee and approved by the court after notice and hearing. The court shall also conduct such other scheduling hearings and status conferences as it deems fit and proper. Whenever possible, these hearings shall be schedules in conjunction with other mandatory events so as to minimize to the most reasonable practicable extent, the time of debtor personnel spent in court and at official meetings.

2.5.8 *Serial Filer Provisions*

Provide in the Bankruptcy Code that, with respect to any debtor (or any entity which has succeeded to substantially all the debtor's assets or business) which files a second case while another case is pending in which such debtor is the (or one of the) debtor(s) or in the event that it again becomes a debtor in a Chapter 11 case within two years after an order of dismissal of a Chapter 11 case in which it was the debtor has become a final order or a Chapter 11 plan has been confirmed, shall not be entitled to the section 362(a) stay unless, after it has become a debtor, it bears the burdens of coming forward and of persuasion, by a preponderance of the evidence, that (1) the new case has resulted from circumstances beyond the control of the debtor not foreseeable at the time the first case was filed and (2) it is more likely than not that it will confirm a feasible plan, but not a liquidating plan, within a reasonable time. In cases involving such debtors when the owners have transferred the business to a new legal entity, owned and arranged by them, the section 362(a) stay would apply on filing but would be lifted on a verified, ex parte motion of the U.S. Trustee, with the right to have it reimposed upon a

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showing of (1) and (2) above. The Federal Rule of Civil Procedure governing injunctions applies to the court's award of a stay to the debtor.

2.5.9 Expanded Grounds for Dismissal or Conversion and Appointment of Trustee

a. Modify section 1112 to read as follows:

(b)(1) Except as provided in subsection (c) of this section or in section 1104(a)(3) of this title, on request of a party in interest or the U.S. Trustee, and after notice and a hearing, the court shall convert a case under this chapter to a case under Chapter 7 of this title or shall dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, where movant establishes cause, except that such relief shall not be granted if the debtor or another party in interest objects and establishes both:

(A) that it is more likely than not that a plan will be confirmed within a time as fixed by this title or by order of the court; and

(B) if the cause is an act or omission of the debtor:

(i) that there exists a reasonable justification for the act or omission; and
(ii) that the act or omission will be cured within a reasonable time fixed by the court not to exceed 30 days after the court decides the motion unless the movant expressly consents to a continuance for a specific period of time or there are compelling circumstances beyond the control of the debtor which justify an extension.

(2) For purposes of this subsection, cause includes:

(A) substantial or continuing loss to or diminution of the estate;

(B) gross mismanagement of the estate;

(C) failure to maintain appropriate insurance;

(D) unauthorized use of cash collateral harmful to one or more creditors;

(E) failure to comply with an order of the court;

(F) failure timely to satisfy any filing or reporting requirement established by this title or by applicable rule;

(G) failure to attend the section 341(a) meeting of creditors or an examination ordered under Bankruptcy Rule 2004;

(H) failure timely to provide information or attend meetings reasonably requested by the U.S. Trustee or;

(I) failure timely to pay taxes due after the order for relief or to file tax returns due after the order for relief;

(J) failure to file or confirm a plan within the time fixed by this title or by order of the court; and

(K) failure to pay any fees or charges required under Chapter 123 of title 28.

(3) The court shall commence the hearing on any motion under this subsection within 30 days after filing of the motion, and shall decide the motion within 15 days after commencement of the hearing, unless the

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movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.

b. Additional Grounds for Appointment of Trustee

Add the following new section to 11 U.S.C. § 1104:

(a)(3) where grounds exist to convert or dismiss the case under section 1112 of this title, but the court determines that the appointment of a Chapter 11 trustee is in the best interests of creditors and the estate.

2.5.10 *Enhanced Powers of the United States Trustee and Bankruptcy Administrator*

Add a new subclause (e) to 11 U.S.C. § 341, and amend 28 U.S.C. § 586 (the general statute governing the powers and duties of the U.S. Trustee) and the Manual for Bankruptcy Administrators, (governing the duties of Bankruptcy Administrators) to require U.S. Trustees in every small business debtor case (except where they, in their reasonable discretion determine that the conduct enumerated below is not advisable in the circumstances):

(1)(a) to conduct an initial debtor interview (“IDI”) with the debtor as soon as practicable after the entry of order for relief but prior to the first meeting scheduled under Bankruptcy Code § 341(a). At the IDI, the U.S. Trustee shall, at a minimum, begin to investigate the debtor’s viability, inquire about the debtor’s business plan, explain the debtor’s obligations to file monthly operating reports and other required reports, attempt to develop an agreed scheduling order, and inform the debtor of other Chapter 11 obligations;

(b) when determined by the U.S. Trustee to be appropriate and advisable, to visit the appropriate business premises of the debtor and ascertain the general state of the debtor’s books and records and verify that the debtor has filed its tax returns. This visit should take place in connection with or reasonably promptly after the IDI (wherever possible, these events shall be combined with other events so as to minimize to the most reasonable practicable extent the amount of time of debtor personnel spent in court and at official meetings); and

(c) to review and monitor diligently on a continuous basis each debtor’s activities, with a view to identifying as promptly as possible those debtors which do not pass the test of being more likely than not to be able to confirm a Chapter 11 plan within a reasonable time; and

(2) In cases where, upon the basis of continuing review, monitoring or otherwise, the U.S. Trustee finds material grounds for any relief under Bankruptcy Code § 1112, to move the court promptly for relief.

Chapter 2: Single Asset Proposals

2.6.1 *Change the Present Statutory Definition of “Single Asset Real Estate” in two ways.*

First, the \$4 million debt limit should be eliminated from the definition of “single asset real estate” debtor subject to section 362(d)(3).

Second, the definition of “single asset real estate” should be more carefully worded to exclude cases in which the real property is used by a debtor in an active business.

The definition, as proposed, incorporating both concepts, would read as follows:

undeveloped real property or other real property constituting a single property or project other than residential real property with fewer than 4 residential units on which is located a single development or project which property or project generates substantially all of the gross income of a debtor and on which no substantial business is being conducted by a debtor, or by a commonly controlled group of entities substantially all of which are concurrently Chapter 11 debtors, other than the business of operating the real property and activities incidental thereto.

2.6.2 Amend Code Section 362(d)(3) in Three Particulars

- a. Make clear that payments required by section 362(d)(3) may be made from rents generated from the property.
- b. Provide that the interest rate with respect to which payments are calculated shall be the nondefault contract rate.
- c. Amend the statute to provide that the payments must be commenced or a plan filed on the later of 90 days after the petition date or 30 days after the court determines the debtor to be subject to section 362(d)(3).

2.6.3 Require Substantial Equity in order to Confirm a Lien-Stripping Plan Using the New Value Exception

In cases where the secured creditor has not made the election under section 1111(b)(1)(a)(i), a plan must satisfy the following requirements to be confirmed under the new-value exception following rejection by a class that includes the unsecured portion of a claim secured by real property: (1) The new value contribution must pay down the secured portion of the claim on the effective date of the plan so that, giving effect to the confirmation of the plan, sufficient cash payments on the secured portion of the claim shall have been made so that the principal amount of debt secured by the property is no more than 80 percent of the court-determined fair market value of the property as of the confirmation date; (2) the payment terms for the secured portion of the claim must both (i) satisfy all applicable requirements of section 1129 of the Code, and (ii) satisfy then-prevailing market terms in the same locality regarding maturity date, amortization, interest rate, fixed-charge coverage and loan documentation; and (3) the new value contribution must be treated as an equity interest that is not convertible to or exchangeable for debt.

Chapter 3: Jurisdiction

3.1.1 Establishing the Bankruptcy Court under Article III of the Constitution

The bankruptcy court should be established under Article III of the Constitution.

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3.1.2 *Transition to an Article III Bankruptcy Court*

As of the enactment of legislation to establish an Article III bankruptcy court, sitting bankruptcy judges should be permitted to finish their current fourteen year terms. As vacancies are created through attrition (including expiration of current statutory term, appointment as an Article III judge, resignation, retirement prior to end of term for any reason, or death), Article III bankruptcy judges should be appointed by the President upon the advice and consent of the Senate to fill those positions. Sitting bankruptcy judges should be permitted to apply for any Article III judgeship positions while remaining on the bench.

Nothing in the Recommendation will affect the length of the current term, salary, retirement benefits, or other attributes of sitting bankruptcy judges.

During the transition period, bankruptcy jurisdiction should be treated in the following manner: as Article III bankruptcy judges are appointed, the jurisdiction provisions under 28 U.S.C. §§ 1334 and 157 should be transferred on a district-by-district basis to the Article III bankruptcy judge sitting in that district. Consequently, bankruptcy jurisdiction would reside in the Article III bankruptcy judge, including the power to refer and withdraw cases and proceedings. While a district is without an Article III bankruptcy judge, the Judicial Council for that circuit should be authorized to: (1) determine the need for an Article III bankruptcy judge in that district, and (2) if necessary, designate an Article III bankruptcy judge from another district (within the circuit) to sit in that district. In the event the judicial council determines a need for an Article III bankruptcy judge and one has not yet been appointed to sit within that circuit, the Chief Justice, upon receiving a certificate of necessity from the chief judge of the circuit, should be authorized to designate an Article III bankruptcy judge from another circuit to fulfill the request.

3.1.3 *Bankruptcy Appellate Process*

The current system which provides two appeals, the first either to a district court or a bankruptcy appellate panel and the second to the U.S. Court of Appeals, as of right from final orders in bankruptcy cases should be changed to eliminate the first layer of review.

3.1.4 *Interlocutory Appeals of Bankruptcy Orders*

28 U.S.C. § 1293 should be added to provide, in addition to the appeal of final bankruptcy orders, for the appeal to the courts of appeals of interlocutory bankruptcy court orders under the following circumstances: (1) an order to increase or reduce the time to file a plan under section 1121(d); (2) an order granting, modifying, or refusing to grant an injunction or an order modifying or refusing to modify the automatic stay; (3) an order appointing or refusing to appoint a trustee, or authorizing the sale or other disposition of property of the estate; (4) where an order is certified by the bankruptcy judge that (x) it involves a controlling issue of law to which there is a substantial difference of opinion, and (y) immediate appeal of the order may materially advance resolution of the litigation, and leave to appeal is granted by the court of appeals; and (5) with leave from the court of appeals.

3.1.5 Venue Provisions under 28 U.S.C. § 1408

28 U.S.C. § 1408(1) should be amended to prohibit corporate debtors from filing for relief in a district based solely on the debtor's incorporation in the state where that district is located.

The affiliate rule contained in 28 U.S.C. § 1408(2) should be amended to prohibit a corporate filing in an improper venue unless such debtor's corporate parent is a debtor in a case under the Bankruptcy Code in that forum. Section 1408(2) should be amended as follows:

(2) in which there is pending a case under title 11 concerning such person's affiliate, as defined in section 101(2)(A) of title 11, general partner, partnership, or a partnership controlled by the same general partner.

The court's discretionary power to transfer venue in the interest of justice and for the convenience of the parties should not be restricted.

Chapter 3: Procedure

3.2.1 Minimum Amount to Commence a Preference Action under 11 U.S.C. § 547

11 U.S.C. § 547 should provide that \$5,000 is the minimum aggregate transfer to a noninsider creditor that must be sought in a nonconsumer debt preference avoidance action.

3.2.2 Venue of Preference Actions under 28 U.S.C. § 1409

28 U.S.C. § 1409 should be amended to require that a preference recovery action against a noninsider seeking less than \$10,000 must be brought in the bankruptcy court in the district where the creditor has its principal place of business. The Recommendation applies to nonconsumer debts only.

3.2.3 Ordinary Course of Business Exception Under 11 U.S.C. § 547(c)(2)(B)

11 U.S.C. § 547(c)(2)(B) should be amended to provide a disjunctive test for whether a payment is made in the ordinary course of the debtor's business if it is made according to ordinary business terms. The ordinary course of business defense to a preference recovery action under section 547(c)(2) should provide as follows:

(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee and such transfer was—

(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

(B) made according to ordinary business terms[.]

3.2.4 Ad Valorem Tax Priority under 11 U.S.C. § 724(b)

11 U.S.C. § 724(b) should be amended to exempt from subordination properly perfected, nonavoidable liens on real or personal property of the estate arising in connection with an ad valorem tax. Section 724(b) should also require the trustee to marshal unencumbered assets of the bankruptcy estate and sur-

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charge secured claims, if warranted by the circumstances, under section 506(c) prior to subordinating any tax liens under the statute.

3.2.5 *Burden of Proof for Tax Proceedings*

The Bankruptcy Code should be amended to clarify that the burden of proof/persuasion rules and concomitant presumptions in tax controversies which would be applicable under nonbankruptcy law are equally applicable in bankruptcy court proceedings to determine tax liabilities under 11 U.S.C. §§ 502 and 505.

3.2.6 *Exception of Tax Refunds Setoffs under 11 U.S.C. § 362(b)*

11 U.S.C. § 362(b) of the Bankruptcy Code should be amended to allow a governmental unit to setoff an income tax refund that arose prior to the commencement of a Chapter 7 or Chapter 13 case against an 'undisputed' income tax liability of an individual debtor that arose prior to the commencement of the case.

Chapter 3: Administration

3.3.1 *United States Trustee Program*

The Director of the Executive Office for United States Trustees should hold the position of Assistant Attorney General.

The United States Trustee regions should match the number, size and configuration of the federal judicial circuits.

3.3.2 *Personal Liability of Trustees*

Trustees appointed in cases under Chapter 7, 11, 12 or 13 of the Bankruptcy Code should not be subject to suit in their individual capacity for acts taken within the scope of their duties as delineated in the Bankruptcy Code or by order of the court, as long as the applicable order was issued on notice to interested parties and there was full disclosure to the court.

Chapter 7, 12 and 13 trustees only should be subject to suit in the trustee's representative capacity and subject to suit in the trustee's personal capacity only to the extent that the trustee acted with gross negligence in the performance of the trustee's fiduciary duties. Gross negligence should be defined as reckless indifference or deliberate disregard of the trustee's fiduciary duty.

A Chapter 11 trustee of a corporate debtor only should be subject to suit in the trustee's representative capacity and subject to suit in the trustee's personal capacity only to the extent that the trustee has violated the standard of care applicable to officers and directors of a corporation in the state in which the Chapter 11 case is pending.

Debtors in possession should remain subject to suit to the same extent as currently exists under state or federal law.

3.3.3 *Qualification of Professionals under 11 U.S.C. § 1107(b)*

Section 1107(b) should be amended to provide that a person should not be disqualified for employment under § 327 solely because such person holds an

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insubstantial unsecured claim against or equity interest in the debtor. Section 327 and § 101(14) should remain unchanged.

3.3.4 *National Admission to Practice*

Admission to practice in one bankruptcy court, usually by virtue of being admitted to practice in the relevant United States District Court, should entitle an attorney, on presentation of a certificate of admission and good standing in another district court, to appear in the other bankruptcy court without the need for any other admission procedure.

The Recommendation will not affect requirements (if any) to associate with local counsel. Similarly, the Recommendation will not change the requirements under state law governing the practice of law and the maintenance of an office for the practice of law. The Recommendation will only amend the local bankruptcy rule or practice requirements governing special admission of attorneys to the bankruptcy court who are otherwise not admitted to the bar of the district court in the district where the bankruptcy court is located to appear in a particular bankruptcy case.

3.3.5 *Fee Examiners*

The Bankruptcy Code should explicitly preclude the appointment of fee examiners as an improper delegation of the court's duty to review and award compensation under 11 U.S.C. § 330. The Recommendation does not affect the court's authority under 11 U.S.C. § 1104(c) to appoint an examiner to investigate and report on certain aspects of a Chapter 11 case, for example, a potential fraudulent transfer or a particularly complicated claims estimation.

3.3.6 *Attorney Referral Services*

11 U.S.C. § 504 should be amended to permit an attorney compensated out of a bankruptcy estate to remit a percentage of such compensation to a bona fide, nonprofit, public service referral program. Such attorney referral program must be operating in accordance with state laws and ethical rules and guidelines governing referrals. The Recommendation does not affect the requirement that all compensation arrangements be disclosed in the application for retention under Fed. R. Bankr. P. 2014 and in the application for compensation under Fed. R. Bankr. P. 2016(a).

Chapter 4: Data Compilation and Dissemination

- 4.1.1** Establish as policy that all data held by bankruptcy clerks in electronic form, to the extent it reflects only public records as defined in Bankruptcy Code § 107, should be released in electronic form to the public, on demand.
- 4.1.2** Establish and fund a pilot project to aggregate the data from sources, particularly bankruptcy clerks, and make that data available to the public in electronic form, on demand.
- 4.1.3** Secure limited-duration appointment of a coordinator, who, with the head of the AO's office and the head of EOUST, would be charged with the duty of:
 - (1) Making recommendations to increase the accuracy of the debtor's petitions, schedules and statements.

RECOMMENDATIONS TO CONGRESS

- (2) setting the data-collection goals.
- (3) coordinating the bankruptcy data-collection efforts of the central reporting agencies.
- (4) reporting on an annual basis to the Congress, the Chief Justice, and the President.

4.1.4 Establish a bankruptcy data system in which (1) a single set of data definitions and forms are used to collect data nationwide and (2) all data for any particular case are aggregated in the same electronic record.

4.1.5 Maximize the number of documents filed electronically and maximize open-to-the-public remote electronic access to all data for free, or at the lowest possible cost.

Chapter 4: Taxation and the Bankruptcy Code

4.2.1 Clarify provisions of the Bankruptcy Code on providing reasonable notice to governmental units.

4.2.2 Amend the Bankruptcy Code to prescribe that to the extent that a tax claim presently is entitled to interest, such interest shall accrue at a stated statutory rate.

4.2.3 The Commission should submit to the Advisory Committee on Bankruptcy Rules of the Judicial Conference (“Rules Committee”) a recommendation that the Federal Rules of Bankruptcy Procedure require that notices demanding the benefits of rapid examination under 11 U.S.C. § 505(b) be sent to the office specifically designated by the applicable taxing authority for such purpose, in any reasonable manner prescribed by such taxing authority.

4.2.4 Conform § 346 of the Bankruptcy Code to IRC 1398(d)(2) election; also conform local and state tax attributes that are transferred to the estate to those tax attributes that are transferred to the bankruptcy estate under IRC § 1398.

4.2.5 Amend 11 U.S.C. § 507(a)(8) and 523(a)(1) to provide for the tolling of relevant periods in the case of successive filings. Thus, in the event of successive bankruptcy filings, the time periods specified in § 507(a)(8) shall be suspended during the period in which a governmental unit was prohibited from pursuing a claim by reason of the prior case.

4.2.6 Amend 11 U.S.C. § 507(a)(8)(ii) to toll the 240-day assessment period for both pre-and post assessment offers in compromise.

4.2.7 Amend the Bankruptcy Code to require “small business debtors” to create and maintain separate bank accounts for trust fund taxes and nontax deductions from employee paychecks. Also, any proposal should provide for sanctions for failure to comply with this Bankruptcy Code requirement.

4.2.8 Amend 11 U.S.C. § 1141(d)(3) to except from discharge taxes unpaid by businesses entities, which nonpayment arose from fraud.

NATIONAL BANKRUPTCY REVIEW COMMISSION

- 4.2.9** Amend 11 U.S.C. § 362(a)(8) to confine its application to proceedings before the Tax Court for tax periods ending on or prior to the filing of the petition in the bankruptcy case and to permit appeals from Tax Court decisions.
- 4.2.10** Application of the periodic payment provisions of § 1129(a)(9)(C) to secured tax that would be entitled to priority absent their secured status.
- 4.2.11** Amend 11 U.S.C. § 545(2) to overrule cases that have penalized the government due to certain benefits for purchasers provided for in the lien provisions of the Internal Revenue Code.
- 4.2.12** Amend 11 U.S.C. § 503 and 28 U.S.C. § 960 to eliminate the need for a governmental unit to make a “request” to the debtor to pay tax liabilities that are entitled to payment as administrative expenses.
- 4.2.13** Amend 11 U.S.C. §§ 502(a)(1) and 503(b)(1)(B) to provide that postpetition ad valorem real estate taxes should be characterized as an administrative expense whether secured or unsecured and such taxes should be payable as an ordinary course expense.
- 4.2.14** Amend the Bankruptcy Code to overrule *Investors of The Triangle v. Carolina Triangle Ltd. Partnership (In re Carolina Triangle Ltd. Partnership)*, 166 B.R. 411 (9th Cir. B.A.P. 1994), and to ensure that postpetition ad valorem real-estate taxes are a reasonable and necessary cost of preservation of the estate.
- 4.2.15** Amend the Bankruptcy Code to establish that ad valorem taxes are incurred by the estate and, therefore, are entitled to administrative expense priority status.
- 4.2.16 & 4.2.17** Amend the Bankruptcy Code to conform the treatment of state and local tax claims to that treatment provided for federal tax claims by, among others, amending 11 U.S.C. § 346 to conform state and local tax attributes to the federal list in IRC § 1398.
- 4.2.18** Clarify IRC § 1398 to provide that the bankruptcy estate’s income is subject to alternative minimum tax and capital gains tax treatment if otherwise applicable.
- 4.2.19** Amend the Bankruptcy Code to provide that the term “assessed or assessment” as used in 11 U.S.C. §§ 362(b)(9) and 507(a)(8) shall mean “that time at which a taxing authority may commence an action to collect the tax.”
- 4.2.20** Amend 11 U.S.C. § 1125(b) to establish standards for tax disclosures in a Chapter 11 disclosure statement.
- 4.2.21** Clarify 11 U.S.C. § 726(a)(1) to provide that a taxing authority must file a claim for a priority tax before the final order approving the trustee’s report is entered by the court.
- 4.2.22** Conformity of Chapter 13 plans with provisions of the Bankruptcy Code: Requirement to file returns.

RECOMMENDATIONS TO CONGRESS

- 4.2.23** Whether an income tax return prepared by the taxing authority should be considered a filed income tax return for purposes of the Bankruptcy Code.
- 4.2.24** Dismissal and injunction against filing subsequent case where court determines that a Chapter 13 debtor is abusing the bankruptcy process.
- 4.2.25** Create a method by which a trustee may obtain a safe harbor and certainty regarding the nature, amount, and consequences of debt discharged.
- 4.2.26** Amend IRC § 1398(e)(3) to provide that a debtor should be treated as an employee of the bankruptcy estate as to payments by the estate of estate assets to the debtor for services performed.
- 4.2.27 & 4.2.28** Tax treatment of the sale by the estate of a debtor's homestead: Availability of capital gain exclusion on sale of residence to the trustee of an individual debtor.
- 4.2.29** Whether changes are needed in IRC §§ 108 and 382 with respect to the issuance of stock for debt.
- 4.2.30** Whether IRC § 1001 should be modified to provide for parallel tax treatment of recourse and nonrecourse debt.
- 4.2.31** Tax treatment of abandonment of property by an estate to the debtor.
- 4.2.32** Application of § 505(b) discharge to estate as well as to the debtor, successor to the debtor, and trustee where taxing authority does not audit.
- 4.2.33** Bifurcation for claim filing purposes of a corporate tax year that straddles the petition date.
- 4.2.34** Requirement of periodic payment for deferred payments of tax under § 1129(a)(9) and designation of interest rate used while making those deferred payments.
- 4.2.35** Authority of bankruptcy courts to grant declaratory judgments on prospective tax issues in Chapter 11 plans of reorganization.
- 4.2.36** Whether payment of prepetition nonpecuniary loss tax penalties in Chapter 11, 12, and 13 cases should be subordinated to payment of general unsecured claims.
- 4.2.37** Whether a substitute for return shall constitute a filed return for purposes of dischargeability issues.

Chapter 4: Chapter 9—Municipal Bankruptcy Relief

4.3.1 *Incorporation of the Securities Contract Liquidation Provisions—11 U.S.C. §§ 555, 556, 559 & 560*

The securities contract liquidation provisions in 11 U.S.C. §§ 555, 556, 559 & 560 should be applicable in Chapter 9 cases and should be added to the list contained in section 901(a).

4.3.2 Chapter 9 Petition as Order for Relief

Section 921(d) should be deleted. Section 921(c) authorizes the court to dismiss a Chapter 9 petition for (1) lack of good faith; or (2) failure to meet the requirements of title 11. Deletion of section 921(d) will eliminate the statutory conflict between section 301 providing that a voluntary petition constitutes an order for relief and section 921(d) authorizing the court to order relief only if the petition is not dismissed under section 921(c). Deletion of section 921(d) will also conform Chapter 9 to all other chapters of the Bankruptcy Code where a voluntary petition is the order for relief.

4.3.3 Eligibility of Municipalities to Serve on Creditors' Committees

11 U.S.C. § 101(41) should be amended to permit municipalities to serve on creditors' committees in Chapter 9 cases under the provisions of 11 U.S.C. § 1102.

4.3.4 Elimination of 11 U.S.C. § 921(b)

Section 921(b) should be deleted. Bankruptcy judges should be appointed to preside over Chapter 9 cases in the same manner as they are appointed to supervise all other cases under the Bankruptcy Code.

4.3.5 Inclusion of "Employees" in 11 U.S.C. § 922(a)

11 U.S.C. § 922(a)(1) should be amended to provide stay protection to nonresident "employees" of municipalities that have filed for Chapter 9 relief. Section 922(a)(1) should read:

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against an officer, employee, or inhabitant of the debtor that seeks to enforce a claim against the debtor[.]

4.3.6 Treatment of Municipal Obligations in Chapter 9

Chapter 9 should be amended to provide comparable protection to all types of tax-exempt obligations sold in the municipal marketplace. The Recommendation will not affect the right of a municipality to use special revenues for the provision of necessary municipal services.

Chapter 4: Chapter 12—Bankruptcy Relief for Family Farmers

4.4.1 Sunset Provision and Chapter 12 Eligibility

The sunset provision should be eliminated. Chapter 12 should be made a permanent addition to the Bankruptcy Code. Section 101(18) should be amended to increase the aggregate debt limits to \$2,500,000. The other eligibility requirements in section 101(18) should remain unchanged.

4.4.2 Direct Payment Plans

28 U.S.C. § 586(e) should be amended to clarify that the calculation of the standing trustee's percentage fee should be based upon the aggregate of those payments "made under the plan" on account of claims impaired or modified by operation of bankruptcy law regardless of who makes the payment.

RELATED UNIFORM LAWS

Uniform Fraudulent Conveyance Act.

Uniform Fraudulent Transfer Act.

Uniform Commercial Code (Selected Sections).

UNIFORM FRAUDULENT CONVEYANCE ACT*

Sec.

1. Definition of Terms.
 2. Insolvency.
 3. Fair Consideration.
 4. Conveyances by Insolvent.
 5. Conveyances by Persons in Business.
 6. Conveyances by a Person About to Incur Debts.
 7. Conveyance Made With Intent to Defraud.
 8. Conveyance of Partnership Property.
 9. Rights of Creditors Whose Claims Have Matured.
 10. Rights of Creditors Whose Claims Have Not Matured.
 11. Cases Not Provided For in Act.
 12. Construction of Act.
 13. Name of Act.
 14. Inconsistent Legislation Repealed.
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§ 1. Definition of Terms

In this act "Assets" of a debtor means property not exempt from liability for his debts. To the extent that any property is liable for any debts of the debtor, such property shall be included in his assets.

"Conveyance" includes every payment of money, assignment, release, transfer, lease, mortgage or pledge of tangible or intangible property, and also the creation of any lien or incumbrance.

"Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.

"Debt" includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.

§ 2. Insolvency

(1) A person is insolvent when the present fair salable value of his assets is less than the amount that will be required to pay his probable liability on his existing debts as they become absolute and matured.

(2) In determining whether a partnership is insolvent there shall be added to the partnership property the present fair salable value of the separate assets of each general partner in excess of the amount probably sufficient to meet the claims of his separate creditors, and also the amount of any unpaid subscription to

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the partnership of each limited partner, provided the present fair salable value of the assets of such limited partner is probably sufficient to pay his debts, including such unpaid subscription.

§ 3. Fair Consideration

Fair consideration is given for property, or obligation,

(a) When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or

(b) When such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained.

§ 4. Conveyances by Insolvent

Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration.

§ 5. Conveyances by Persons in Business

Every conveyance made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent.

§ 6. Conveyances by a Person About to Incur Debts

Every conveyance made and every obligation incurred without fair consideration when the person making the conveyance or entering into the obligation intends or believes that he will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors.

§ 7. Conveyance Made With Intent to Defraud

Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors.

§ 8. Conveyance of Partnership Property

Every conveyance of partnership property and every partnership obligation incurred when the partnership is or will be thereby rendered insolvent, is fraudulent as to partnership creditors, if the conveyance is made or obligation is incurred,

(a) To a partner, whether with or without a promise by him to pay partnership debts, or

(b) To a person not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners.

§ 9. Rights of Creditors Whose Claims Have Matured

(1) Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or mediately from such a purchaser,

(a) Have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim, or

(b) Disregard the conveyance and attach or levy execution upon the property conveyed.

(2) A purchaser who without actual fraudulent intent has given less than a fair consideration for the conveyance or obligation, may retain the property or obligation as security for repayment.

§ 10. Rights of Creditors Whose Claims Have Not Matured

Where a conveyance made or obligation incurred is fraudulent as to a creditor whose claim has not matured he may proceed in a court of competent jurisdiction against any person against whom he could have proceeded had his claim matured, and the court may,

(a) Restrain the defendant from disposing of his property.

(b) Appoint a receiver to take charge of the property.

(c) Set aside the conveyance or annul the obligation, or

(d) Make any order which the circumstances of the case may require.

§ 11. Cases Not Provided For in Act

In any case not provided for in this Act the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy or other invalidating cause shall govern.

§ 12. Construction of Act

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 13. Name of Act

This act may be cited as the Uniform Fraudulent Conveyance Act.

§ 14. Inconsistent Legislation Repealed

Sections . . . are hereby repealed, and all acts or parts of acts inconsistent with this Act are hereby repealed.

UNIFORM FRAUDULENT TRANSFER ACT*

See, also, Uniform Fraudulent Conveyance Act, to which this act is the successor, supra, this pamphlet.

Sec.

1. Definitions.
 2. Insolvency.
 3. Value.
 4. Transfers of Fraudulent as to Present and Future Creditors.
 5. Transfers Fraudulent as to Present Creditors.
 6. When Transfer is Made or Obligation is Incurred.
 7. Remedies of Creditors.
 8. Defenses, Liability, and Protection of Transferee.
 9. Extinguishment of [Claim for Relief] [Cause of Action].
 10. Supplementary Provisions.
 11. Uniformity of Application and Construction.
 12. Short Title.
 13. Repeal.
-

§ 1. Definitions

As used in this [Act]:

(1) "Affiliate" means:

(i) a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

(A) as a fiduciary or agent without sole discretionary power to vote the securities; or

(B) solely to secure a debt, if the person has not exercised the power to vote;

(ii) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

(A) as a fiduciary or agent without sole power to vote the securities; or

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(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

(iii) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(iv) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but the term does not include:

(i) property to the extent it is encumbered by a valid lien;

(ii) property to the extent it is generally exempt under nonbankruptcy law; or

(iii) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) "Creditor" means a person who has a claim.

(5) "Debt" means liability on a claim.

(6) "Debtor" means a person who is liable on a claim.

(7) "Insider" includes:

(i) if the debtor is an individual,

(A) a relative of the debtor or of a general partner of the debtor;

(B) a partnership in which the debtor is a general partner;

(C) a general partner in a partnership described in clause (B);

or

(D) a corporation of which the debtor is a director, officer, or person in control;

(ii) if the debtor is a corporation,

(A) a director of the debtor;

(B) an officer of the debtor;

(C) a person in control of the debtor;

(D) a partnership in which the debtor is a general partner;

(E) a general partner in a partnership described in clause (D);

or

(F) a relative of a general partner, director, officer, or person in control of the debtor;

(iii) if the debtor is a partnership,

(A) a general partner in the debtor;

(B) a relative of a general partner in, a general partner of, or a person in control of the debtor;

(C) another partnership in which the debtor is a general partner;

(D) a general partner in a partnership described in clause (C);
or

(E) a person in control of the debtor;

(iv) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(v) a managing agent of the debtor.

(8) “Lien” means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) “Person” means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) “Property” means anything that may be the subject of ownership.

(11) “Relative” means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(12) “Transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) “Valid lien” means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

§ 2. Insolvency

(a) A debtor is insolvent if the sum of the debtor’s debts is greater than all of the debtor’s assets at a fair valuation.

(b) A debtor who is generally not paying his [or her] debts as they become due is presumed to be insolvent.

(c) A partnership is insolvent under subsection (a) if the sum of the partnership’s debts is greater than the aggregate, at a fair valuation, of all of the partnership’s assets and the sum of the excess of the value of each general partner’s nonpartnership assets over the partner’s nonpartnership debts.

(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this [Act].

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

§ 3. Value

(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of Sections 4(a)(2) and 5, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

§ 4. Transfers Fraudulent as to Present and Future Creditors

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that he [or she] would incur, debts beyond his [or her] ability to pay as they became due.

(b) In determining actual intent under subsection (a)(1), consideration may be given, among other factors, to whether:

(1) the transfer or obligation was to an insider;

(2) the debtor retained possession or control of the property transferred after the transfer;

(3) the transfer or obligation was disclosed or concealed;

(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) the transfer was of substantially all the debtor's assets;

(6) the debtor absconded;

(7) the debtor removed or concealed assets;

(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

§ 5. Transfers Fraudulent as to Present Creditors

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

~~(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.~~

§ 6. When Transfer is Made or Obligation is Incurred

For the purposes of this [Act]:

(1) a transfer is made:

(i) with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(ii) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this [Act] that is superior to the interest of the transferee;

(2) if applicable law permits the transfer to be perfected as provided in paragraph (1) and the transfer is not so perfected before the commencement of an action for relief under this [Act], the transfer is deemed made immediately before the commencement of the action;

(3) if applicable law does not permit the transfer to be perfected as provided in paragraph (1), the transfer is made when it becomes effective between the debtor and the transferee;

(4) a transfer is not made until the debtor has acquired rights in the asset transferred;

(5) ~~an obligation is~~ incurred:

(i) if oral, when it becomes effective between the parties; or

(ii) if ~~evidenced by a writing, when the writing~~ executed by the obligor is delivered to or for the benefit of the obligee.

§ 7. Remedies of Creditors

(a) In an action for relief against a transfer or obligation under this [Act], a creditor, subject to the limitations in Section 8, may obtain:

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) an attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by [];

(3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure,

(i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

§ 8. Defenses, Liability, and Protection of Transferee

(a) A transfer or obligation is not voidable under Section 4(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under Section 7(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

(2) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(c) If the judgment under subsection (b) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this [Act], a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to

(1) a lien on or a right to retain any interest in the asset transferred;

(2) enforcement of any obligation incurred; or

(3) a reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under Section 4(a)(2) or Section 5 if the transfer results from:

(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law: or

(2) enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code.

(f) A transfer is not voidable under Section 5(b):

(1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien:

(2) if made in the ordinary course of business or financial affairs of the debtor and the insider: or

(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

§ 9. Extinguishment of [Claim for Relief] [Cause of Action]

A [claim for relief] [cause of action] with respect to a fraudulent transfer or obligation under this [Act] is extinguished unless action is brought:

(a) under Section 4(a)(1), within 4 years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant:

(b) under Section 4(a)(2) or 5(a), within 4 years after the transfer was made or the obligation was incurred: or

(c) under Section 5(b), within one year after the transfer was made or the obligation was incurred.

§ 10. Supplementary Provisions

Unless displaced by the provisions of this [Act], the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

§ 11. Uniformity of Application and Construction

This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

§ 12. Short Title

This [Act] may be cited as the Uniform Fraudulent Transfer Act.

§ 13. Repeal

The following acts and all other acts and parts of acts inconsistent herewith are hereby repealed:

UNIFORM COMMERCIAL CODE

Selected Sections

Article 2—Sales

Part 7—Remedies

Sec.

2-702. Seller's Remedies on Discovery of Buyer's Insolvency.

[Pre-Revision] Article 9—Secured Transactions

Part 3—Rights of Third Parties; Perfected and Unperfected Security Interests; Rules of Priority

- 9-301. Persons Who Take Priority Over Unperfected Security Interests; Rights of "Lien Creditor".
- 9-302. When Filing Is Required to Perfect Security Interest; Security Interests to Which Filing Provisions of This Article Do Not Apply.
- 9-303. When Security Interest Is Perfected; Continuity of Perfection.
- 9-304. Perfection of Security Interest in Instruments, Documents, and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.
- 9-305. When Possession by Secured Party Perfects Security Interest Without Filing.
- 9-306. "Proceeds"; Secured Party's Rights on Disposition of Collateral.
- 9-312. Priorities Among Conflicting Security Interests in the Same Collateral.
- 9-318. Defenses Against Assignee; Modification of Contract After Notification of Assignment; Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment.

Revised (2000) Article 9—Secured Transactions

Part 1—General Provisions

- 9-107. Control of Letter-of-credit Right.

Part 2—Effectiveness of Security Agreement; Attachment of Security Interest; Rights of Parties to Security Agreement

- 9-203. Attachment and Enforceability of Security Interest; Proceeds; Supporting Obligations; Formal Requisites.

Part 3—Perfection and Priority

- 9-301. Law Governing Perfection and Priority of Security Interests.
- 9-308. When Security Interest or Agricultural Lien Is Perfected; Continuity of Perfection.
- 9-309. Security Interest Perfected Upon Attachment.
- 9-310. When Filing Required to Perfect Security Interest or Agricultural Lien; Security Interests and Agricultural Liens to Which Filing Provisions Do Not Apply.

Sec.

- 9-312. Perfection of Security Interests in Chattel Paper, Deposit Accounts, Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.
- 9-313. When Possession by or Delivery to Secured Party Perfects Security Interest Without Filing.
- 9-315. Secured Party's Rights on Disposition of Collateral and in Proceeds.
- 9-317. Interests That Take Priority Over or Take Free of Unperfected Security Interest or Agricultural Lien.
- 9-322. Priorities Among Conflicting Security Interests in and Agricultural Liens on Same Collateral.
- 9-324. Priority of Purchase-money Security Interests.
- 9-325. Priority of Security Interests in Transferred Collateral.
- 9-329. Priority of Security Interests in Letter-of-credit Right.
- 9-330. Priority of Purchaser of Chattel Paper or Instrument.
- 9-404. Rights Acquired by Assignee; Claims and Defenses Against Assignee.
- 9-406. Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective.
- 9-408. Restrictions on Assignment of Promissory Notes, Health-care-insurance Receivables, and Certain General Intangibles Ineffective.

Article 2—Sales

PART 7—REMEDIES

* * *

§ 2-702. Seller's Remedies on Discovery of Buyer's Insolvency.

(1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Article (Section 2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this Article (Section 2-403). Successful reclamation of goods excludes all other remedies with respect to them.

As amended in 1966.

* * *

[Pre-Revision] Article 9—Secured Transactions**PART 3—RIGHTS OF THIRD PARTIES; PERFECTED
AND UNPERFECTED SECURITY INTERESTS;
RULES OF PRIORITY****§ 9-301. Persons Who Take Priority Over Unperfected Security
Interests; Rights of “Lien Creditor”.**

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

- (a) persons entitled to priority under Section 9-312;
- (b) a person who becomes a lien creditor before the security interest is perfected;
- (c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;
- (d) in the case of accounts, general intangibles, and investment property, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within ten days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A “lien creditor” means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

As amended in 1972 and 1994.

**§ 9-302. When Filing Is Required to Perfect Security Interest;
Security Interests to Which Filing Provisions of
This Article Do Not Apply.**

(1) A financing statement must be filed to perfect all security interests except the following:

- (a) a security interest in collateral in possession of the secured party under Section 9-305;
 - (b) a security interest temporarily perfected in instruments, certificated securities, or documents without delivery under Section 9-304 or in proceeds for a 10 day period under Section 9-306;
 - (c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;
 - (d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in Section 9-313;
 - (e) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;
 - (f) a security interest of a collecting bank (Section 4-210) or arising under the Articles on Sales and Leases (see Section 9-113) or covered in subsection (3) of this section;
 - (g) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.
 - (h) a security interest in investment property which is perfected without filing under Section 9-115 or Section 9-116.
- (2) If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.
- (3) The filing of a financing statement otherwise required by this Article is not necessary or effective to perfect a security interest in property subject to
- (a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this Article for filing of the security interest; or
 - (b) the following statutes of this state: [list any certificate of title statute covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, and any central filing statute *]; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Article (Part 4) apply to a security interest in that collateral created by him as debtor; or
 - (c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of Section 9-103).
- (4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this Article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in Section 9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this Article.

** Note: It is recommended that the provisions of certificate of title acts for perfection of security interests by notation on the certificates should be amended to exclude coverage of inventory held for sale.*

As amended in 1972, 1977 and 1994.

§ 9-303. When Security Interest Is Perfected; Continuity of Perfection.

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in Sections 9-115, 9-302, 9-304, 9-305 and 9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this Article and is subsequently perfected in some other way under this Article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Article. As amended in 1994.

§ 9-304. Perfection of Security Interest in Instruments, Documents, Proceeds of a Written Letter of Credit, and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in the rights to proceeds of a written letter of credit can be perfected only by the secured party's taking possession of the letter of credit. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of Section 9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments, certificated securities, or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a certificated security, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of

loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection (3) of Section 9-312; or

- (b) delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21 day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this Article.

As amended in 1972, 1977, 1994 and 1995.

§ 9-305. When Possession by Secured Party Perfects Security Interest Without Filing.

A security interest in goods, instruments, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. A security interest in the right to proceeds of a written letter of credit may be perfected by the secured party's taking possession of the letter of credit. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without a relation back and continues only so long as possession is retained, unless otherwise specified in this Article. The security interest may be otherwise perfected as provided in this Article before or after the period of possession by the secured party.

As amended in 1972, 1977, 1994, and 1995.

§ 9-306. "Proceeds"; Secured Party's Rights on Disposition of Collateral.

(1) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Any payments or distributions made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "non-cash proceeds".

(2) Except where this Article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

- (a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the

proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or

- (b) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds;
- (c) the original collateral was investment property and the proceeds are identifiable cash proceeds; or
- (d) the security interest in the proceeds is perfected before the expiration of the ten day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this Article for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

- (a) in identifiable non-cash proceeds and in separate deposit accounts containing only proceeds;
- (b) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;
- (c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and
- (d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is
 - (i) subject to any right to set-off; and
 - (ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

- (a) If the goods were collateral at the time of sale, for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

- (b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under Section 9-308.
- (c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).
- (d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

As amended in 1972 and 1994.

§ 9-312. Priorities Among Conflicting Security Interests in the Same Collateral.

(1) The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: Section 4-210 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; Section 9-103 on security interests related to other jurisdictions; Section 9-114 on consignments; Section 9-115 on security interests in investment property.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

- (a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and
- (b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the 21 day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of Section 9-304); and
- (c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and
- (d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

- (a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.
- (b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under Section 9-115 or Section 9-116 on investment property, the security interest has the same priority for the purposes of subsection (5) or Section 9-115(5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

As amended in 1972, 1977 and 1994.

§ 9-318. Defenses Against Assignee; Modification of Contract After Notification of Assignment; Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment.

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in Section 9-206 the rights of an assignee are subject to

- (a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and
- (b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract.

The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest. As amended in 1972.

Revised (2000) Article 9—Secured Transactions

[Revised Article 9 has a delayed effective date of July 1, 2001]

[For the full text of the UCC and Official Comments, see
Selected Commercial Statutes (West Group 2000)]

PART 1—GENERAL PROVISIONS

§ 9-107. Control of Letter-of-credit Right.

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under Section 5-114(c) or otherwise applicable law or practice.

PART 2—EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT

§ 9-203. Attachment and Enforceability of Security Interest; Proceeds; Supporting Obligations; Formal Requi- sites.

(a) [Attachment.] A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) [Enforceability.] Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

- (1) value has been given;
- (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (3) one of the following conditions is met:

- (A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
- (B) the collateral is not a certificated security and is in the possession of the secured party under Section 9-313 pursuant to the debtor's security agreement;
- (C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8-301 pursuant to the debtor's security agreement; or
- (D) the collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under Section 9-104, 9-105, 9-106, or 9-107 pursuant to the debtor's security agreement.

(c) **[Other UCC provisions.]** Subsection (b) is subject to Section 4-210 on the security interest of a collecting bank, Section 5-118 on the security interest of a letter-of-credit issuer or nominated person, Section 9-110 on a security interest arising under Article 2 or 2A, and Section 9-206 on security interests in investment property.

(d) **[When person becomes bound by another person's security agreement.]** A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:

- (1) the security agreement becomes effective to create a security interest in the person's property; or
- (2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) **[Effect of new debtor becoming bound.]** If a new debtor becomes bound as debtor by a security agreement entered into by another person:

- (1) the agreement satisfies subsection (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and
- (2) another agreement is not necessary to make a security interest in the property enforceable.

(f) **[Proceeds and supporting obligations.]** The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by Section 9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) **[Lien securing right to payment.]** The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) **[Security entitlement carried in securities account.]** The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) **[Commodity contracts carried in commodity account.]** The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

PART 3—PERFECTION AND PRIORITY

§ 9-301. Law Governing Perfection and Priority of Security Interests.

Except as otherwise provided in Sections 9-303 through 9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

- (1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.
- (2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.
- (3) Except as otherwise provided in paragraph (4), while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:
 - (A) perfection of a security interest in the goods by filing a fixture filing;
 - (B) perfection of a security interest in timber to be cut; and
 - (C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.
- (4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

§ 9-308. When Security Interest or Agricultural Lien Is Perfected; Continuity of Perfection.

(a) **[Perfection of security interest.]** Except as otherwise provided in this section and Section 9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in Sections 9-310 through 9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) **[Perfection of agricultural lien.]** An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in Section 9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) **[Continuous perfection; perfection by different methods.]** A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this article and is later perfected by another method under this article, without an intermediate period when it was unperfected.

(d) **[Supporting obligation.]** Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) **[Lien securing right to payment.]** Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) **[Security entitlement carried in securities account.]** Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) **[Commodity contract carried in commodity account.]** Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

Legislative Note: *Any statute conflicting with subsection (e) must be made expressly subject to that subsection.*

§ 9-309. Security Interest Perfected Upon Attachment.

The following security interests are perfected when they attach:

- (1) a purchase-money security interest in consumer goods, except as otherwise provided in Section 9-311(b) with respect to consumer goods that are subject to a statute or treaty described in Section 9-311(a);
- (2) an assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;
- (3) a sale of a payment intangible;
- (4) a sale of a promissory note;
- (5) a security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;
- (6) a security interest arising under Section 2-401, 2-505, 2-711(3), or 2A-508(5), until the debtor obtains possession of the collateral;
- (7) a security interest of a collecting bank arising under Section 4-210;
- (8) a security interest of an issuer or nominated person arising under Section 5-118;
- (9) a security interest arising in the delivery of a financial asset under Section 9-206(c);
- (10) a security interest in investment property created by a broker or securities intermediary;
- (11) a security interest in a commodity contract or a commodity account created by a commodity intermediary;
- (12) an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and
- (13) a security interest created by an assignment of a beneficial interest in a decedent's estate.

§ 9-310. When Filing Required to Perfect Security Interest or Agricultural Lien; Security Interests and Agricultural Liens to Which Filing Provisions Do Not Apply.

(a) **[General rule: perfection by filing.]** Except as otherwise provided in subsection (b) and Section 9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) **[Exceptions: filing not necessary.]** The filing of a financing statement is not necessary to perfect a security interest:

- (1) that is perfected under Section 9-308(d), (e), (f), or (g);
- (2) that is perfected under Section 9-309 when it attaches;
- (3) in property subject to a statute, regulation, or treaty described in Section 9-311(a);
- (4) in goods in possession of a bailee which is perfected under Section 9-312(d)(1) or (2);
- (5) in certificated securities, documents, goods, or instruments which is perfected without filing or possession under Section 9-312(e), (f), or (g);
- (6) in collateral in the secured party's possession under Section 9-313;
- (7) in a certificated security which is perfected by delivery of the security certificate to the secured party under Section 9-313;
- (8) in deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under Section 9-314;
- (9) in proceeds which is perfected under Section 9-315; or
- (10) that is perfected under Section 9-316.

(c) **[Assignment of perfected security interest.]** If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

§ 9-312. Perfection of Security Interests in Chattel Paper, Deposit Accounts, Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(a) **[Perfection by filing permitted.]** A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) **[Control or possession of certain collateral.]** Except as otherwise provided in Section 9-315(c) and (d) for proceeds:

- (1) a security interest in a deposit account may be perfected only by control under Section 9-314;

(2) and except as otherwise provided in Section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under Section 9-314; and

(3) a security interest in money may be perfected only by the secured party's taking possession under Section 9-313.

(c) **[Goods covered by negotiable document.]** While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) **[Goods covered by nonnegotiable document.]** While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

(e) **[Temporary perfection: new value.]** A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) **[Temporary perfection: goods or documents made available to debtor.]** A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) **[Temporary perfection: delivery of security certificate or instrument to debtor.]** A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) **[Expiration of temporary perfection.]** After the 20-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this article.

§ 9-313. When Possession by or Delivery to Secured Party Perfects Security Interest Without Filing.

(a) **[Perfection by possession or delivery.]** Except as otherwise provided in subsection (b), a secured party may perfect a security interest in negotiable

documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 8-301.

(b) **[Goods covered by certificate of title.]** With respect to goods covered by a certificate of title issued by this State, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in Section 9-316(d).

(c) **[Collateral in possession of person other than debtor.]** With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

- (1) the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or
- (2) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) **[Time of perfection by possession; continuation of perfection.]** If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) **[Time of perfection by delivery; continuation of perfection.]** A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under Section 8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) **[Acknowledgment not required.]** A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) **[Effectiveness of acknowledgment; no duties or confirmation.]** If a person acknowledges that it holds possession for the secured party's benefit:

- (1) the acknowledgment is effective under subsection (c) or Section 8-301(a), even if the acknowledgment violates the rights of a debtor; and
- (2) unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) **[Secured party's delivery to person other than debtor.]** A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

- (1) to hold possession of the collateral for the secured party's benefit; or
- (2) to redeliver the collateral to the secured party.

(i) **[Effect of delivery under subsection (h); no duties or confirmation.]** A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is

delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

§ 9-315. Secured Party's Rights on Disposition of Collateral and in Proceeds.

(a) **[Disposition of collateral: continuation of security interest or agricultural lien; proceeds.]** Except as otherwise provided in this article and in Section 2-403(2):

(1) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) a security interest attaches to any identifiable proceeds of collateral.

(b) **[When commingled proceeds identifiable.]** Proceeds that are commingled with other property are identifiable proceeds:

(1) if the proceeds are goods, to the extent provided by Section 9-336; and

(2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.

(c) **[Perfection of security interest in proceeds.]** A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) **[Continuation of perfection.]** A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:

(1) the following conditions are satisfied:

(A) a filed financing statement covers the original collateral;

(B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) the proceeds are not acquired with cash proceeds;

(2) the proceeds are identifiable cash proceeds; or

(3) the security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within 20 days thereafter.

(e) **[When perfected security interest in proceeds becomes unperfected.]** If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) becomes unperfected at the later of:

(1) when the effectiveness of the filed financing statement lapses under Section 9-515 or is terminated under Section 9-513; or

(2) the 21st day after the security interest attaches to the proceeds.

§ 9-317. Interests That Take Priority Over or Take Free of Unperfected Security Interest or Agricultural Lien.

(a) **[Conflicting security interests and rights of lien creditors.]** An unperfected security interest or agricultural lien is subordinate to the rights of:

- (1) a person entitled to priority under Section 9-322; and
- (2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time the security interest or agricultural lien is perfected or a financing statement covering the collateral is filed.

(b) **[Buyers that receive delivery.]** Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) **[Lessees that receive delivery.]** Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) **[Licensees and buyers of certain collateral.]** A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) **[Purchase-money security interest.]** Except as otherwise provided in Sections 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

§ 9-322. Priorities Among Conflicting Security Interests in and Agricultural Liens on Same Collateral.

(a) **[General priority rules.]** Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

- (1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.
- (2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.
- (3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) **[Time of perfection: proceeds and supporting obligations.]** For the purposes subsection (a)(1):

- (1) the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and
- (2) the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) **[Special priority rules: proceeds and supporting obligations.]** Except as otherwise provided in subsection (f), a security interest in collateral which qualifies for priority over a conflicting security interest under Section 9-327, 9-328, 9-329, 9-330, or 9-331 also has priority over a conflicting security interest in:

- (1) any supporting obligation for the collateral; and
- (2) proceeds of the collateral if:
 - (A) the security interest in proceeds is perfected;
 - (B) the proceeds are cash proceeds or of the same type as the collateral; and
 - (C) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) **[First-to-file priority rule for certain collateral.]** Subject to subsection (e) and except as otherwise provided in subsection (f), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) **[Applicability of subsection (d).]** Subsection (d) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) **[Limitations on subsections (a) through (e).]** Subsections (a) through (e) are subject to:

- (1) subsection (g) and the other provisions of this part;
- (2) Section 4-210 with respect to a security interest of a collecting bank;
- (3) Section 5-118 with respect to a security interest of an issuer or nominated person; and
- (4) Section 9-110 with respect to a security interest arising under Article 2 or 2A.

(g) **[Priority under agricultural lien statute.]** A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides

§ 9-324. Priority of Purchase-money Security Interests.

(a) **[General rule: purchase-money priority.]** Except as otherwise provided in subsection (g), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in Section 9-327, a perfected

security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(b) **[Inventory purchase-money priority.]** Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in Section 9-330, and, except as otherwise provided in Section 9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

- (1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;
- (2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
- (3) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and
- (4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) **[Holders of conflicting inventory security interests to be notified.]** Subsections (b)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

- (1) if the purchase-money security interest is perfected by filing, before the date of the filing; or
- (2) if the purchase-money security interest is temporarily perfected without filing or possession under Section 9-312(f), before the beginning of the 20-day period thereunder.

(d) **[Livestock purchase-money priority.]** Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in Section 9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

- (1) the purchase-money security interest is perfected when the debtor receives possession of the livestock;
- (2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
- (3) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

- (4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) **[Holders of conflicting livestock security interests to be notified.]**

Subsections (d)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

- (1) if the purchase-money security interest is perfected by filing, before the date of the filing; or
- (2) if the purchase-money security interest is temporarily perfected without filing or possession under Section 9-312(f), before the beginning of the 20-day period thereunder.

(f) **[Software purchase-money priority.]** Except as otherwise provided in subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in Section 9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) **[Conflicting purchase-money security interests.]** If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f):

- (1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and
- (2) in all other cases, Section 9-322(a) applies to the qualifying security interests.

§ 9-325. Priority of Security Interests in Transferred Collateral.

(a) **[Subordination of security interest in transferred collateral.]** Except as otherwise provided in subsection (b), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

- (1) the debtor acquired the collateral subject to the security interest created by the other person;
- (2) the security interest created by the other person was perfected when the debtor acquired the collateral; and
- (3) there is no period thereafter when the security interest is unperfected.

(b) **[Limitation of subsection (a) subordination.]** Subsection (a) subordinates a security interest only if the security interest:

- (1) otherwise would have priority solely under Section 9-322(a) or 9-324; or
- (2) arose solely under Section 2-711(3) or 2A-508(5).

§ 9-329. Priority of Security Interests in Letter-of-credit Right.

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

- (1) A security interest held by a secured party having control of the letter-of-credit right under Section 9-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.
- (2) Security interests perfected by control under Section 9-314 rank according to priority in time of obtaining control.

§ 9-330. Priority of Purchaser of Chattel Paper or Instrument.

(a) **[Purchaser's priority: security interest claimed merely as proceeds.]** A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

- (1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 9-105; and
- (2) the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) **[Purchaser's priority: other security interests.]** A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 9-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) **[Chattel paper purchaser's priority in proceeds.]** Except as otherwise provided in Section 9-327, a purchaser having priority in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:

- (1) Section 9-322 provides for priority in the proceeds; or
- (2) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) **[Instrument purchaser's priority.]** Except as otherwise provided in Section 9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) **[Holder of purchase-money security interest gives new value.]** For purposes of subsections (a) and (b), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) **[Indication of assignment gives knowledge.]** For purposes of subsections (b) and (d), if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

§ 9-404. Rights Acquired by Assignee; Claims and Defenses Against Assignee.

(a) **[Assignee's rights subject to terms, claims, and defenses; exceptions.]** Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e), the rights of an assignee are subject to:

- (1) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and
- (2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) **[Account debtor's claim reduces amount owed to assignee.]** Subject to subsection (c) and except as otherwise provided in subsection (d), the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) only to reduce the amount the account debtor owes.

(c) **[Rule for individual under other law.]** This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) **[Omission of required statement in consumer transaction.]** In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) **[Inapplicability to health-care-insurance receivable.]** This section does not apply to an assignment of a health-care-insurance receivable.

§ 9-406. Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective.

(a) **[Discharge of account debtor; effect of notification.]** Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) **[When notification ineffective.]** Subject to subsection (h), notification is ineffective under subsection (a):

- (1) if it does not reasonably identify the rights assigned;

- (2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or
- (3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:
 - (A) only a portion of the account, chattel paper, or general intangible has been assigned to that assignee;
 - (B) a portion has been assigned to another assignee; or
 - (C) the account debtor knows that the assignment to that assignee is limited.

(c) **[Proof of assignment.]** Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) **[Term restricting assignment generally ineffective.]** Except as otherwise provided in subsection (e) and Sections 2A-303 and 9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

- (1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or
- (2) provides that the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) **[Inapplicability of subsection (d) to certain sales.]** Subsection (d) does not apply to the sale of a payment intangible or promissory note.

(f) **[Legal restrictions on assignment generally ineffective.]** Except as otherwise provided in Sections 2A-303 and 9-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

- (1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or
- (2) provides that the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) **[Subsection (b)(3) not waivable.]** Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) **[Rule for individual under other law.]** This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) **[Inapplicability to health-care-insurance receivable.]** This section does not apply to an assignment of a health-care-insurance receivable.

(j) **[Section prevails over specified inconsistent law.]** This section prevails over any inconsistent provisions of the following statutes, rules, and regulations:

[List here any statutes, rules, and regulations containing provisions inconsistent with this section.]

Legislative Note: *States that amend statutes, rules, and regulations to remove provisions inconsistent with this section need not enact subsection (j).*

§ 9-408. Restrictions on Assignment of Promissory Notes, Health-care-insurance Receivables, and Certain General Intangibles Ineffective.

(a) **[Term restricting assignment generally ineffective.]** Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

- (1) would impair the creation, attachment, or perfection of a security interest:
or
- (2) provides that the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) **[Applicability of subsection (a) to sales of certain rights to payment.]** Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) **[Legal restrictions on assignment generally ineffective.]** A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

- (1) would impair the creation, attachment, or perfection of a security interest;
or
- (2) provides that the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) **[Limitation on ineffectiveness under subsections (a) and (c).]** To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

- (1) is not enforceable against the person obligated on the promissory note or the account debtor;
- (2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;
- (3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;
- (4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;
- (5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and
- (6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) **[Section prevails over specified inconsistent law.]** This section prevails over any inconsistent provisions of the following statutes, rules, and regulations:

[List here any statutes, rules, and regulations containing provisions inconsistent with this section.]

Legislative Note: *States that amend statutes, rules, and regulations to remove provisions inconsistent with this section need not enact subsection (e).*

FEDERAL TAX LIEN STATUTES

INTERNAL REVENUE CODE

Selected Sections

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Chapter 64—Collection

Subchapter C—Lien for Taxes

§ 6321. Lien for Taxes

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

§ 6322. Period of Lien

Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lapse of time.

§ 6323. Validity and Priority Against Certain Persons

(a) Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors.—The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary.

(b) Protection for certain interests even though notice filed.—Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid—

(1) Securities.—With respect to a security (as defined in subsection (h)(4))—

(A) as against a purchaser of such security who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and

(B) as against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.

(2) Motor vehicles.—With respect to a motor vehicle (as defined in subsection (h)(3)), as against a purchaser of such motor vehicle, if—

(A) at the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and

(B) before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

(3) Personal property purchased at retail.—With respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of such purchase such purchaser intends such purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

(4) Personal property purchased in casual sale.—With respect to household goods, personal effects, or other tangible personal property described in section 6334(a) purchased (not for resale) in a casual sale for less than \$1,000, as against the purchaser, but only if such purchaser does not have actual notice or knowledge (A) of the existence of such lien, or (B) that this sale is one of a series of sales.

(5) Personal property subject to possessory lien.—With respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a lien, if such holder is, and has been, continuously in possession of such property from the time such lien arose.

(6) Real property tax and special assessment liens.—With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of—

(A) a tax of general application levied by any taxing authority based upon the value of such property;

(B) a special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

(C) charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(7) Residential property subject to a mechanic's lien for certain repairs and improvements.—With respect to real property subject to a lien for repair or improvement of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor, but only if the contract price on the contract with the owner is not more than \$5,000.

(8) Attorneys' liens.—With respect to a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under local law, holds a lien upon or a contract enforceable against such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement, except that this paragraph shall not apply to any judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judgment or amount against any liability of the taxpayer to the United States.

(9) Certain insurance contracts.—With respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at any time—

(A) before such organization had actual notice or knowledge of the existence of such lien;

(B) after such organization had such notice or knowledge, with respect to advances required to be made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge; or

(C) after satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary delivers to such organization a notice, executed after the date of such satisfaction, of the existence of such lien.

(10) "Deposit-secured loans."—With respect to a savings deposit, share, or other account with an institution described in section 581 or 591, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account.

(c) Protection for certain commercial transactions financing agreements, etc.—

(1) In general.—To the extent provided in this subsection, even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which—

(A) is in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting—

- (i) a commercial transactions financing agreement,
- (ii) a real property construction or improvement financing agreement, or
- (iii) an obligatory disbursement agreement, and

(B) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(2) Commercial transactions financing agreement.—For purposes of this subsection—

(A) Definition.—The term "commercial transactions financing agreement" means an agreement (entered into by a person in the course of his trade or business)—

(i) to make loans to the taxpayer to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

(ii) to purchase commercial financing security (other than inventory) acquired by the taxpayer in the ordinary course of his trade or business;

but such an agreement shall be treated as coming within the term only to the extent that such loan or purchase is made before the 46th day after the date of tax lien filing or (if earlier) before the lender or purchaser had actual notice or knowledge of such tax lien filing.

(B) Limitation on qualified property.—The term “qualified property”, when used with respect to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the 46th day after the date of tax lien filing.

(C) Commercial financing security defined.—The term “commercial financing security” means (i) paper of a kind ordinarily arising in commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory.

(D) Purchaser treated as acquiring security interest.—A person who satisfies subparagraph (A) by reason of clause (ii) thereof shall be treated as having acquired a security interest in commercial financing security.

(3) Real property construction or improvement financing agreement.—For purposes of this subsection—

(A) Definition.—The term “real property construction or improvement financing agreement” means an agreement to make cash disbursements to finance—

(i) the construction or improvement of real property,

(ii) a contract to construct or improve real property, or

(iii) the raising or harvesting of a farm crop or the raising of livestock or other animals.

For purposes of clause (iii), the furnishing of goods and services shall be treated as the disbursement of cash.

(B) Limitation on qualified property.—The term “qualified property”, when used with respect to a real property construction or improvement financing agreement, includes only—

(i) in the case of subparagraph (A)(i), the real property with respect to which the construction or improvement has been or is to be made,

(ii) in the case of subparagraph (A)(ii), the proceeds of the contract described therein, and

(iii) in the case of subparagraph (A)(iii), property subject to the lien imposed by section 6321 at the time of tax lien filing and the crop or the livestock or other animals referred to in subparagraph (A)(iii).

(4) Obligatory disbursement agreement.—For purposes of this subsection—

(A) Definition.—The term “obligatory disbursement agreement” means an agreement (entered into by a person in the course of his trade or business) to make disbursements, but such an agreement shall be treated as coming within the term only to the extent of disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer.

(B) Limitation on qualified property.—The term “qualified property”, when used with respect to an obligatory disbursement agreement, means property subject to the lien imposed by section 6321 at the time of tax lien filing and (to the extent that the acquisition is directly traceable to the disbursements referred to in subparagraph (A)) property acquired by the taxpayer after tax lien filing.

(C) Special rules for surety agreements.—Where the obligatory disbursement agreement is an agreement ensuring the performance of a contract between the taxpayer and another person—

(i) the term “qualified property” shall be treated as also including the proceeds of the contract the performance of which was ensured, and

(ii) if the contract the performance of which was ensured was a contract to construct or improve real property, to produce goods, or to furnish services, the term “qualified property” shall be treated as also including any tangible personal property used by the taxpayer in the performance of such ensured contract.

(d) 45-day period for making disbursements.—Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made before the 46th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest—

(1) is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and

(2) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(e) Priority of interest and expenses.—If the lien imposed by section 6321 is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to—

(1) any interest or carrying charges upon the obligation secured,

(2) the reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

(3) the reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured.

(4) the reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) the reasonable costs of insuring payment of the obligation secured, and

(6) amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321.

to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates.

(f) Place for filing notice; form.—

(1) Place for filing.—The notice referred to in subsection (a) shall be filed—

(A) Under State laws.—

(i) Real property.—In the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; and

(ii) Personal property.—In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated, except that State law merely conforming to or reenacting Federal law establishing a national filing system does not constitute a second office for filing as designated by the laws of such State; or

(B) With clerk of district court.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or

(C) With Recorder of Deeds of the District of Columbia.—In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(2) Situs of property subject to lien.—For purposes of paragraphs (1) and (4), property shall be deemed to be situated—

(A) Real property.—In the case of real property, at its physical location; or

(B) Personal property.—In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (2)(B), the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia.

(3) Form.—The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary. Such notice shall be valid notwith-

standing any other provision of law regarding the form or content of a notice of lien.

(4) Indexing required with respect to certain real property.—In the case of real property, if—

(A) under the laws of the State in which the real property is located, a deed is not valid as against a purchaser of the property who (at the time of purchase) does not have actual notice or knowledge of the existence of such deed unless the fact of filing of such deed has been entered and recorded in a public index at the place of filing in such a manner that a reasonable inspection of the index will reveal the existence of the deed, and

(B) there is maintained (at the applicable office under paragraph (1)) an adequate system for the public indexing of Federal tax liens,

then the notice of lien referred to in subsection (a) shall not be treated as meeting the filing requirements under paragraph (1) unless the fact of filing is entered and recorded in the index referred to in subparagraph (B) in such a manner that a reasonable inspection of the index will reveal the existence of the lien.

(5) National filing systems.—The filing of a notice of lien shall be governed solely by this title and shall not be subject to any other Federal law establishing a place or places for the filing of liens or encumbrances under a national filing system.

(g) Refiling of notice.—For purposes of this section—

(1) General rule.—Unless notice of lien is refiled in the manner prescribed in paragraph (2) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

(2) Place for filing.—A notice of lien refiled during the required refiling period shall be effective only—

(A) if—

(i) such notice of lien is refiled in the office in which the prior notice of lien was filed, and

(ii) in the case of real property, the fact of refiling is entered and recorded in an index to the extent required by subsection (f)(4); and

(B) in any case in which, 90 days or more prior to the date of a refiling of notice of lien under subparagraph (A), the Secretary received written information (in the manner prescribed in regulations issued by the Secretary) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located.

(3) Required refiling period.—In the case of any notice of lien, the term “required refiling period” means—

(A) the one-year period ending 30 days after the expiration of 10 years after the date of the assessment of the tax, and

(B) the one-year period ending with the expiration of 10 years after the close of the preceding required refiling period for such notice of lien.

(4) **Transitional rule.**—Notwithstanding paragraph (3), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

(h) **Definitions.**—For purposes of this section and section 6324—

(1) **Security interest.**—The term “security interest” means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money’s worth.

(2) **Mechanic’s lienor.**—The term “mechanic’s lienor” means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement of such property. For purposes of the preceding sentence, a person has a lien on the earliest date such lien becomes valid under local law against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

(3) **Motor vehicle.**—The term “motor vehicle” means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

(4) **Security.**—The term “security” means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(5) **Tax lien filing.**—The term “tax lien filing” means the filing of notice (referred to in subsection (a)) of the lien imposed by section 6321.

(6) **Purchaser.**—The term “purchaser” means a person who, for adequate and full consideration in money or money’s worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. In applying the preceding sentence for purposes of subsection (a) of this section, and for purposes of section 6324—

(A) a lease of property,

(B) a written executory contract to purchase or lease property,

(C) an option to purchase or lease property or any interest therein,

or

(D) an option to renew or extend a lease of property,

which is not a lien or security interest shall be treated as an interest in property.

(i) Special rules.—

(1) Actual notice or knowledge.—For purposes of this subchapter, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routine. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(2) Subrogation.—Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324.

(3) Forfeitures.—For purposes of this subchapter, a forfeiture under local law of property seized by a law enforcement agency of a State, county, or other local governmental subdivision shall relate back to the time of seizure, except that this paragraph shall not apply to the extent that under local law the holder of an intervening claim or interest would have priority over the interest of the State, county, or other local governmental subdivision in the property.

(4) Cost-of-living adjustment.—In the case of notices of liens imposed by section 6321 which are filed in any calendar year after 1998, each of the dollar amounts under paragraph (4) or (7) of subsection (b) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting “calendar year 1996” for “calendar year 1992” in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10.

(j) Withdrawal of notice in certain circumstances.—

(1) In general.—The Secretary may withdraw a notice of a lien filed under this section and this chapter shall be applied as if the withdrawn notice had not been filed, if the Secretary determines that—

(A) the filing of such notice was premature or otherwise not in accordance with administrative procedures of the Secretary,

(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise,

(C) the withdrawal of such notice will facilitate the collection of the tax liability, or

(D) with the consent of the taxpayer or the National Taxpayer Advocate, the withdrawal of such notice would be in the best interests of

the taxpayer (as determined by the Taxpayer Advocate) and the United States.

Any such withdrawal shall be made by filing notice at the same office as the withdrawn notice. A copy of such notice of withdrawal shall be provided to the taxpayer.

(2) Notice to credit agencies, etc.—Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn under paragraph (1), the Secretary shall promptly make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in such request, of the withdrawal of such notice. Any such request shall be in such form as the Secretary may prescribe.

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